

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)	CASE NO. 1:19CR529-1
)	
vs.)	
)	Winston-Salem, North Carolina
MAURICE OWEN WILEY, JR.)	April 20, 2021
		9:17 a.m.

TRANSCRIPT OF THE TRIAL
VOLUME II OF VII (Pgs. 248-457)
BEFORE THE HONORABLE THOMAS D. SCHROEDER
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(The Defendant was present.)

THE COURT: All right. Mr. Green, let me just say I apologize for the delay. I don't know if you're aware; one of the alternates tripped coming up the steps, as I understand it, into the building. Unfortunately, from what I hear, she may have face-planted.

Now, having said that -- and I think it was Ms. Frazier. I'm not sure, but I think so. Yes. Having said that, I asked Ms. Engle just to make an inquiry whether she felt like she wanted to proceed or not, and she's interested in serving.

So the EMS are, I hope, finishing up whatever treatment they are doing. So within the next few minutes, hopefully we'll be ready, but that's what the delay has been. We'll just have to manage that the best we can. If she's able to serve and willing to serve, I would like to keep her on just in case we might need her at some point.

MR. GREEN: Yes, Your Honor.

THE COURT: All right.

MR. GREEN: In this time, if it please the Court, it might be useful to go ahead and just demonstrate for the Court how the -- and I've had discussions with counsel, and I think they are agreeable -- how we intend to introduce the documentary evidence, and we can display it.

1 **THE COURT:** All right.

2 **MR. GREEN:** So if you'll just pick an exhibit. Maybe
3 the China Wok picture.

4 **THE COURT:** They did put a monitor -- or they were
5 going to. I can't see it.

6 **MR. RENTERIA:** I ran out of time, Judge.

7 **THE COURT:** We're going to put another monitor for
8 the jurors on the floor there just to make sure everybody can
9 see.

10 **MR. GREEN:** So what we would intend to do, with the
11 Court's blessing, is display the exhibit as you see it on your
12 screen.

13 **THE COURT:** All right.

14 **MR. GREEN:** I don't believe the witness -- I don't
15 believe the jurors can see. They cannot. These monitors are
16 off.

17 **THE COURT:** Okay.

18 **MR. GREEN:** I'll ask the witness to -- yep, the
19 monitors -- I would ask the witness to identify the exhibit.
20 And then when it's properly introduced, then I would ask that
21 exhibit to be published; at which point, Ms. Engle will throw
22 the magic switch, and they will see the exhibit, and then we'll
23 proceed in that manner.

24 These should match exhibit per exhibit the trial
25 notebook that the Court has been presented and Ms. Engle has

1 been presented.

2 **THE COURT:** Excuse me. Is there a way we can pull
3 that this way some more or not?

4 **MR. RENTERIA:** I think there were some concerns,
5 Judge, that if we tilt it any further, some of the jurors on
6 the floor would not be able to see it.

7 **THE COURT:** That was what I was wondering, whether
8 they could see it better if we tilt it or not, the jurors on
9 the floor.

10 **MR. RENTERIA:** We can. Plus, there's another one,
11 Judge, right here in the front of the bench, and it's tilted
12 straight this way at all five of them so they can either look
13 to the one on the floor or the one to their right.

14 **THE COURT:** Okay. All right.

15 **MR. GREEN:** And then we would just proceed in that
16 manner with the exhibits.

17 **THE COURT:** All right. So it will not be published
18 to the jury until you've admitted it; right?

19 **MR. GREEN:** That's right. That's certainly the
20 intention, Your Honor. We'll be very deliberate about that
21 process.

22 **THE COURT:** Are there going to be objections to some
23 of the exhibits?

24 **MR. BRYSON:** Well, other than the text messages.
25 That's the only one that comes to mind right now.

1 **THE COURT:** Okay. And those aren't going to happen
2 for a while; right?

3 **MR. BRYSON:** Right.

4 **MR. GREEN:** Right, Your Honor.

5 **THE COURT:** All right.

6 **MR. GREEN:** And to be clear, we did have that meeting
7 on Friday. We discussed and reviewed the exhibits that the
8 Government intends to introduce. And, of course, during the
9 course of trial, there may be one or two extra or something we
10 see and say this is a point we need to hit, and we'll obviously
11 discuss that with counsel before we attempt to introduce it.

12 **THE COURT:** All right. Well, for the time being,
13 there is a motion in limine on the text messages. My
14 instruction is do not introduce any of those until it's brought
15 to the Court's attention and the Defendant has an opportunity
16 to be heard.

17 **MR. GREEN:** Yes, Your Honor.

18 There is also a pending -- just so the Court is
19 aware, there was a pending motion in limine that related to a
20 chase.

21 **THE COURT:** Yes.

22 **MR. GREEN:** And we will not mention that. That
23 evidence would also likely come in, if at all, at a period of
24 time close in time to those text messages. So we will,
25 likewise, not make any reference to them until such time --

1 **THE COURT:** All right. One issue I will have with
2 that, as the Defendant pointed out, is whether the Defendant
3 was aware that the reason he was being chased had to do with
4 this event as opposed to his being sought for some other
5 warrant for something else, which was, in fact, what the
6 Government had indicated originally in a prior briefing. So
7 that would be a concern of mine.

8 **MR. GREEN:** Sure. And then -- and we have some
9 evidence on that point.

10 In any event, Your Honor, another kind of
11 housekeeping matter, while we're waiting for the EMT, the first
12 Government's witness will be Ms. Chan. Ms. Chan speaks
13 Mandarin. She also speaks English very well. We have an
14 interpreter here. That name has been provided to the clerk.
15 We'd obviously want that interpreter sworn.

16 It is the witness' desire, and if it meets with the
17 Court's desire -- she's very concerned about making sure she
18 understands the questions. So, if possible, what we would ask
19 is that the interpreter interpret in Mandarin every question;
20 and then if she is able to articulate clearly in English, that
21 she answer in English. If there is at any point where she is
22 struggling with words, then we ask that she be able to go ahead
23 and speak in Chinese.

24 **THE COURT:** All right. What's the Defendant's view
25 about proceeding in that fashion, which would be different from

1 having the witness speak in Mandarin and then having the
2 translator indicate what the witness said?

3 **MR. BRYSON:** We have no objection, Your Honor.

4 **THE COURT:** Okay. Yes, Mr. Foster?

5 **MR. FOSTER:** Yes, Your Honor, just one quick thing.
6 We move under Rule 615, if it's not already been done, to
7 exclude all witnesses.

8 **THE COURT:** That was my next question is where the
9 parties were on that.

10 So they are invoking the rule. So all of your
11 witnesses will remain outside the courtroom before testifying.

12 **MR. GREEN:** We do -- we acknowledge and have
13 instructed the witnesses not to discuss their testimony at any
14 time until released by the Court.

15 And then also I would ask that Agent Jocys, who is
16 identified as a witness but also the lead case agent, be able
17 to be -- remain in the courtroom.

18 **THE COURT:** She's permitted under 615.

19 Any objection?

20 **MR. FOSTER:** No, Your Honor.

21 **THE COURT:** Okay. Now, the scope of Rule 615 is not
22 entirely clear and sometimes subject to judicial modification,
23 but right now the ruling is that any person who's a witness
24 remain outside the courtroom until they are done testifying.
25 And I imagine if they are subject to recall as well, that they

1 not return to the courtroom.

2 Is that your understanding of the rule?

3 **MR. GREEN:** It certainly -- it can be. I have
4 previously had the rule --

5 **THE COURT:** Let me just ask it that way. Any
6 objection to proceeding in that fashion?

7 **MR. GREEN:** We do have victims who have independent
8 rights, I think, under the Crime Victims' Act. I do not --
9 have not been told or anticipate that they would --

10 (Assistant U.S. attorneys conferred.)

11 Those witnesses, which are early in the trial who
12 would be released, the victims, they may desire to stay and
13 watch the proceedings.

14 **THE COURT:** Any objection to that?

15 **MR. FOSTER:** No, Your Honor.

16 **THE COURT:** So then the last question is any
17 discussion with any of the witnesses about the trial testimony,
18 even though they are outside the courtroom, not to share the
19 trial testimony with the witnesses -- any objection to
20 proceeding in that fashion?

21 **MR. GREEN:** Do not, and we've so instructed each and
22 every witness.

23 **THE COURT:** Okay. All right. I'm told -- yes.

24 **MR. GREEN:** And just the last matter, while we're
25 waiting, of course, the best-laid plans, as we start -- I know

1 we'll move quickly to the first witness and introduction of
2 evidence.

3 The first Government's exhibit, No. 1, will actually
4 be introduced a little later on. So you will hear me ask about
5 Government's Exhibits 2 and 3 and maybe even 4 before I get to
6 1. I haven't lost track. I hate to start out like that, but
7 that's kind of how it got organized.

8 **THE COURT:** That's all right. It's like writing a
9 check out of order. That's fine.

10 Is everybody ready to proceed? I am told the jurors
11 are here, and I would like to bring them in and get underway.

12 What we'll do is swear the jury panel. I will give
13 the preliminary charge. Then we'll allow you to do your
14 opening statements. And you are going to do them here from the
15 lectern; right?

16 **MR. GREEN:** I guess the final question is -- I
17 believe we had an indication there was going to be another
18 monitor installed.

19 Do we want to get that accomplished?

20 **THE COURT:** Well, there may be. Is it needed? I
21 mean, we can add it.

22 **MR. RENTERIA:** Is it needed for opening?

23 **MR. GREEN:** Well, there is going to be obviously --

24 **THE COURT:** How long will that take?

25 **MR. RENTERIA:** Five minutes, if that, Judge.

1 **THE COURT:** Can we do it in two?

2 **MR. RENTERIA:** Yes, I can do it in two.

3 Be right back.

4 (Pause in the proceedings.)

5 (The jury returned to the courtroom at 9:29 a.m.)

6 **THE COURT:** There are some cables on the ground, so
7 please watch your step.

8 Ladies and gentlemen, welcome back. I'm sorry we got
9 a late start. We had an unfortunate incident. I think it's
10 Ms. Frazier may have had a spill outside the courthouse.

11 Are you okay, ma'am?

12 **ALTERNATE JUROR NO. 1:** Yes.

13 **THE COURT:** Do you feel like you are ready to serve
14 as a juror or not?

15 **ALTERNATE JUROR NO. 1:** Sure.

16 **THE COURT:** I'm sorry that that happened. If anybody
17 ever has any trouble, there are security guards out there and
18 others to help you at any time. They just redid that whole
19 plaza, so I'm sorry that happened. That's brand new out there,
20 but I'm glad you're okay. If you have any trouble as we go
21 forward through the day, just let us know, ma'am.

22 Please administer the oath to the jury.

23 (The jury panel was duly sworn/affirmed.)

24 **THE COURT:** Members of the jury, now that you have
25 been sworn, I will give you some preliminary instructions that

1 will you guide you in your participation in the trial. My
2 instructions will probably take about eight or nine minutes.

3 It will be your duty to find from the evidence what
4 the facts are. You, and you alone, will be the judges of the
5 facts. You will then have to apply to those facts the law as I
6 give it to you. You must follow the law whether you agree with
7 it or not.

8 And if you have any trouble hearing me or any of the
9 lawyers at any time or a witness, raise your hand so that we
10 will know that. All right?

11 Nothing that the Court, meaning me -- that I may say
12 or do during the course of the trial is intended to indicate
13 nor should it be taken by you as indicating what your verdict
14 should be.

15 As you know, this is a criminal case. There are
16 three basic rules about a criminal case that you must keep in
17 mind:

18 First, the Defendant is presumed innocent until
19 proven guilty. The indictment brought by the Government
20 against the Defendant is only an accusation and nothing more.
21 It is not proof of guilt or anything else. The Defendant,
22 therefore, starts out with a clean slate.

23 Second, the burden of proof is on the Government
24 through the very end of the case. The Defendant has no burden
25 to prove his innocence or to present any evidence or to

1 testify. Since the Defendant has the right to remain silent,
2 the law prohibits you from arriving at your verdict by
3 considering that the Defendant may not have testified or
4 offered evidence.

5 Third, the Government must prove the Defendant's
6 guilt beyond a reasonable doubt. The Government's burden is
7 not beyond all doubt but beyond a reasonable doubt. I will
8 give you further instructions on this point later, but, bear in
9 mind, that in this respect a criminal case is different from a
10 civil case.

11 I will give you detailed instructions on the law at
12 the end of the case, and those instructions will control your
13 deliberations and decisions; but in order to help you follow
14 the evidence, I will now give you a brief summary of the
15 charges against the Defendant and the elements of the offenses
16 that the Government must prove to make its case.

17 The Government charges the Defendant, Mr. Wiley, with
18 four offenses under the United States Code listed in the
19 superseding indictment, which I will also simply call "the
20 indictment." I will now describe to you each element of the
21 charged offenses. Remember that the elements of the offenses
22 are what the Government must prove beyond a reasonable doubt
23 before you may find the Defendant guilty of that offense. And
24 I would add that each offense must be considered separately.

25 In Count One of the indictment, it charges Mr. Wiley

1 with conspiracy to commit a Hobbs Act robbery in violation of
2 Title 18 of the U.S. Code, Section 1951(a). To prove this
3 offense, the Government must prove each of the following
4 elements beyond a reasonable doubt:

5 First, that the Defendant conspired with one or more
6 persons to commit a robbery. In this case the Government
7 charges that on or about April 13, 2018, through on or about
8 April 15, 2018, the Defendant, Maurice Owen Wiley, Jr., also
9 known as Tweet, conspired with Darryl Bradford, Jr., also known
10 as Stretch; Hykeem Deshun Cox, also known as Chub; Semaj
11 Jayron-Maleek Bradley, also known as Squeeze; Charles Winfor
12 Daniels, also known as Murda; and other persons, known and
13 unknown, to take and obtain U.S. currency and merchandise from
14 owners and employees of China Wok by robbery in Durham, North
15 Carolina.

16 To prove a conspiracy, the Government must establish
17 the following beyond a reasonable doubt:

18 One, an agreement between two or more persons to do
19 something the law prohibits;

20 Two, the Defendant knew of the agreement or
21 conspiracy;

22 And, three, the Defendant knowingly and intentionally
23 joined the agreement or conspiracy.

24 Robbery, within the meaning of the Hobbs Act, is the
25 unlawful taking or obtaining of personal property from the

1 person or in the presence of another against his will by means
2 of actual or threatened force or violence or fear of injury,
3 immediate or future, to his person or property, or property in
4 his custody or possession, or the person or property of a
5 relative or member of his family, or of anyone in his company
6 at the time of the taking or obtaining.

7 And, second, the Government must prove beyond a
8 reasonable doubt that the robbery would probably have
9 obstructed, delayed, or affected commerce or the movement of
10 any article or commodity in commerce.

11 Commerce means commerce within the District of
12 Columbia or any territory or possession of the United States,
13 all commerce between any point in a state, territory,
14 possession or the District of Columbia and any point outside
15 thereof, all commerce between points within the same states,
16 through any place outside such state, and all other commerce
17 over which the United States has jurisdiction.

18 I instruct you that this second element may be
19 satisfied where the evidence shows that the Defendant and his
20 coconspirators targeted the proceeds of a business that was
21 engaged in interstate commerce.

22 The law allows proof of a conspiracy by direct or
23 circumstantial evidence, and, therefore, you may consider
24 either or both in reaching your verdict.

25 Count Two of the indictment charges Mr. Wiley with

1 attempted Hobbs Act robbery in violation of Title 18, U.S.
2 Code, Section 1951(a).

3 To prove this offense, the Government must prove each
4 of the following elements beyond a reasonable doubt:

5 First, the Defendant had the culpable intent to
6 commit a Hobbs Act robbery;

7 And, second, the Defendant took a substantial step
8 toward the completion of the Hobbs Act robbery that strongly
9 corroborates the intent to commit the offense.

10 A Hobbs Act robbery has the same definition as I have
11 stated as to Count One, including the effect on interstate
12 commerce I previously instructed you about.

13 With respect to the second element, a substantial
14 step is a direct act in a course of conduct planned to
15 culminate in the commission of a crime that is strongly
16 corroborative of a defendant's criminal purpose.

17 In this case, the Government charges that on or about
18 April 15, 2018, the Defendant, Maurice Owen Wiley, Jr., also
19 known as Tweet; Darryl Bradford, Jr., known as Stretch; Hykeem
20 Deshun Cox, also known as Chub; Semaj Jayron-Maleek Bradley,
21 also known as Squeeze; and Charles Winfor Daniels, also known
22 as Murda, did unlawfully attempt to take and obtain U.S.
23 currency and merchandise belonging to the China Wok from the
24 possession of owners and employees of the said business by
25 robbery in Durham, North Carolina.

1 I instruct you that the effect on interstate commerce
2 may be satisfied where the evidence shows that the Defendant or
3 his coconspirators targeted the proceeds of a business that was
4 engaged in interstate commerce during an attempted robbery.
5 The Government may meet its burden of proof by using direct or
6 circumstantial evidence.

7 Count Three of the indictment charges Mr. Wiley with
8 conspiring to possess firearms in furtherance of a crime of
9 violence in violation of Title 18, U.S. Code, Section 924(O).
10 To prove this offense, the Government must prove each of the
11 following elements beyond a reasonable doubt:

12 First, two or more persons agreed to possess a
13 firearm or firearms in furtherance of a crime of violence which
14 may be prosecuted in federal court. For purposes of this
15 count, a Hobbs Act robbery, as I have previously defined it, is
16 a crime of violence. The term "firearm," as used in these
17 instructions, means any weapon which will or is designed to or
18 may readily be converted to expel a projectile by the action of
19 an explosive;

20 Second, the Government must prove that the Defendant
21 knew of this agreement or conspiracy;

22 And, third, that the Defendant knowingly and
23 voluntarily participated in or become a part of this agreement
24 or conspiracy.

25 In this case, the Government charges that on or about

1 April 13, 2018, continuing up to and including on or about
2 April 15, 2018, the Defendant, Maurice Owen Wiley, Jr., also
3 known as Tweet; Darryl Bradford, Jr., also known as Stretch;
4 Hykeem Deshun Cox, also known as Chub; Semaj Jayron-Maleek
5 Bradley, also known as Squeeze; Charles Winfor Daniels, also
6 known as Murda, and other coconspirators did unlawfully
7 conspire with each other and other persons, known and unknown,
8 to possess firearms in furtherance of a crime of violence.

9 Count Four of the indictment charges Mr. Wiley with
10 possession of ammunition by a convicted felon in violation of
11 Title 18, U.S. Code, Section 922(g)(1). To prove this offense,
12 the Government must prove each of the following elements beyond
13 a reasonable doubt:

14 First, on or about April 15, 2018, the Defendant
15 knowingly possessed ammunition;

16 Second, at the time of the possession, the Defendant
17 had previously been convicted in any court of a crime
18 punishable by imprisonment for a term exceeding one year, that
19 is, a felony offense, and that the conviction had not been
20 expunged, set aside, or pardoned;

21 Third, at the time of the possession, the Defendant
22 knew that he had previously been convicted in a court of a
23 crime punishable by imprisonment for a term exceeding one year,
24 that is, a felony offense;

25 And, fourth, that the possession of the ammunition

1 was in or affecting commerce, that is, at some time prior to
2 the Defendant's possession, the ammunition had traveled from
3 one state to another or from a foreign country to the United
4 States.

5 The term "ammunition," as used in these instructions,
6 means ammunition or cartridge cases, primers, bullets, or
7 propellant powder designed for use in any firearm. The term
8 "firearm" carries the same definition that I previously stated
9 to you.

10 It is not necessary for the Government to prove that
11 the Defendant knew that the ammunition had traveled in or
12 affected interstate or foreign commerce, nor is it necessary to
13 prove that the Defendant knew he was prohibited from possessing
14 the ammunition; rather, ignorance of the law is not a defense
15 to this charge.

16 In this case, the Defendant and the Government have
17 stipulated, that is, they have agreed, that the Defendant has a
18 prior felony conviction. Therefore, the Government is not
19 required to present additional evidence on this element, and
20 you may properly consider that as having been proved.

21 The guilt of a defendant in a criminal case may be
22 proved without evidence that he personally did every act
23 involved in the commission of the crime charged. The law
24 recognizes that ordinarily anything a person can do for himself
25 may also be accomplished through the direction of another

1 person as an agent or by acting together with or under the
2 direction of another person or persons known as a principal in
3 a joint effort.

4 In two of the counts, in Count Two and Count Four,
5 the Government has also charged Mr. Wiley with aiding and
6 abetting the charged crime in each count in violation of Title
7 18 of the U.S. Code, Section 2. To prove this offense, the
8 Government must prove each of the following elements beyond a
9 reasonable doubt:

10 First, that the Defendant aided, abetted, counseled,
11 commanded, induced, or procured the commission of the offense
12 described in Count One [sic] or Count Four, or that the
13 Defendant willfully caused an act to be done, which, if
14 directly performed by him or another, would constitute the
15 offense described in Count Two or Count Four.

16 I will now define possession, as used in these
17 instructions. The law recognizes several kinds of possession.
18 A person may have actual possession or constructive possession.
19 A person may also have sole or joint possession.

20 A person who knowingly has direct physical control
21 over a thing at a given time is in actual possession of it.

22 A person who, although not in actual possession,
23 knowingly has both the power and the intention at a given time
24 to exercise dominion or control over a thing, either directly
25 or through another person or persons, is then in constructive

1 possession of it. To prove constructive possession, the
2 Government must prove beyond a reasonable doubt that the
3 Defendant had knowledge of the presence of the item or items in
4 question and that he had both the power and the intention to
5 later take control over the item or items.

6 Constructive possession may be inferred from the
7 facts and circumstances, including, for example, evidence that
8 a person exercised control over a vehicle or a residence in
9 which he knew the item in question was present. However, a
10 Defendant's mere presence at the location where the item was
11 found is insufficient, standing alone, to support a guilty
12 verdict.

13 The law recognizes also that possession may be sole
14 or joint. If one person alone has actual or constructive
15 possession of a thing, possession is sole. If two or more
16 persons share actual or constructive possession of a thing,
17 possession is joint.

18 When I use the word "possession," I am referring to
19 actual as well as constructive possession and sole as well as
20 joint possession. Therefore, you may find that the element of
21 possession, as that term is used in these instructions, is
22 present if you find beyond a reasonable doubt that the
23 Defendant had actual or constructive possession, either alone
24 or jointly with others.

25 Now, the evidence from which you will find the facts

1 will consist of the testimony of witnesses, documents, and
2 other things received into the record as exhibits and any facts
3 that the lawyers agree to, or stipulate to, or that the Court
4 may instruct you to find.

5 There are two kinds of evidence: Direct and
6 circumstantial. Direct evidence is direct proof of a fact,
7 such as testimony of an eyewitness. Circumstantial evidence is
8 proof of facts from which you may infer or conclude that other
9 facts exist. I will give you further instructions on these as
10 well as other matters at the end of the case, but keep in mind
11 that you may consider both kinds of evidence.

12 A stipulation is when the parties agree that
13 something is true. When the parties agree that something is
14 true, you should, therefore, treat that fact as having been
15 proved. Otherwise, it is up to you to determine whether you
16 believe or do not believe the evidence that is presented to you
17 in the case.

18 Certain things are not evidence, and they must not be
19 considered by you. I will list them for you now. The
20 statements, the arguments, and the questions by the lawyers are
21 not evidence. Objections to questions are not evidence. The
22 lawyers have an obligation to their clients to make objections
23 when they believe evidence that's being offered is improper
24 under the Rules of Evidence. You should not be influenced by
25 the objection or by the Court's ruling on it.

1 If I sustain the objection, then you must ignore the
2 question. If I overrule the objection, you should treat the
3 answer like you would any other. If you are instructed that
4 some item of evidence is received for a limited purpose only,
5 you must follow that instruction.

6 The testimony that the Court has excluded or told you
7 to disregard is not evidence and must not be considered.
8 Anything you may have seen or heard outside the courtroom is
9 not evidence and must be disregarded. You are to decide the
10 case solely on the evidence presented here in the courtroom.

11 As you listen to the witnesses, watch them carefully.
12 Ask yourself: Does it appear that they are being sincere in
13 what they are telling you? Did the person have the opportunity
14 to observe carefully what they are telling you? Does the
15 person have a good memory and the ability to accurately
16 remember whatever it is they are telling you? Does the person
17 have anything to gain by testifying falsely in the case?

18 It will be up to you to decide which witnesses to
19 believe, which witnesses not to believe, and how much of any
20 witness' testimony to accept or to reject.

21 Now, I mentioned attorney objections a moment ago.
22 Let me say a few more words about objections.

23 When one of the attorneys is asking questions, the
24 other may object to a question being asked. When that happens,
25 what the lawyer is saying is this: Judge, under the Federal

1 Rules of Evidence, it is my position that the witness should
2 not be allowed to answer the question. Do not hold it against
3 either party if their lawyer asserts an objection. It has --
4 they, rather, have a right to do that.

5 Now, there'll be times when I will be able to rule on
6 the objection without talking with the lawyers, but there may
7 be times when I need to talk with the lawyers. We've tried to
8 anticipate those and to avoid stopping the trial, but sometimes
9 we cannot anticipate them all. In those cases, if I think it
10 can be handled quickly, I may ask the lawyers to approach the
11 bench. When we discuss matters here at the bench, do not try
12 to determine what we are saying. You are not supposed to hear
13 what we're saying. That's why we are having a meeting outside
14 of your presence. If you can hear, please raise your hand and
15 let us know that we may be speaking too loudly. If you can
16 read lips, do not try to do that here. I will try to get
17 everyone in a position so you will not be tempted to do that.

18 If we need to have a more expensive discussion, I
19 will excuse you and send you back to the jury room. If I have
20 to do that, please understand that we are working on something
21 that we must discuss outside of your presence. In any event, I
22 will try to resolve the issue with the least inconvenience to
23 you as jurors.

24 When I do rule on an objection, if I say "overruled,"
25 it means I will allow the question or questions to be answered;

1 I'm overruling the objection. You may then consider the answer
2 that you hear. If I say "sustained," it means I will not allow
3 the question to be answered; and in that case, do not consider
4 the question and do not try to guess what you think the answer
5 might have been. That would be speculation, and speculation is
6 not evidence.

7 It's not unusual that witnesses themselves are not
8 familiar with these rules; and, on occasion, they may not
9 understand that, when there is an objection, they should wait
10 until I rule before they answer. Or it may be that the witness
11 did not hear the objection and started to answer anyway. If
12 that happens and I have said "sustained," meaning that the
13 witness should not be allowed to answer the question, you must
14 erase what you've heard. You cannot consider the answer or a
15 partial answer at all for your deliberations.

16 Now, just a few words about your conduct as jurors
17 and then we will begin.

18 First, I instruct you, as I have previously, that
19 during the trial you are not to discuss this case with anyone
20 or to permit anyone to discuss it with you. Until you retire
21 to the jury room at the end of the case to deliberate on your
22 verdict, you simply are not to talk about the case. Do not
23 talk about the case until you are instructed by me to
24 deliberate at the end of the case, and then you may only talk
25 about the case among your other jurors when all of you are

1 present. You cannot discuss the case with anyone else until
2 you have returned a verdict and the case is at an end.

3 I know many of you, probably all of you, use cell
4 phones and BlackBerries, the Internet, and other tools of
5 technology. I instruct you that you also must not talk to
6 anyone about this case or use these tools to communicate
7 electronically with anybody about the case. This includes your
8 family and your friends. This prohibition includes any form of
9 communication whatsoever, including through your cell phones,
10 BlackBerries, through text messaging, through email, on
11 Twitter, through any blog or website, through any Internet chat
12 room, or by way other social network, such as Facebook,
13 MySpace, LinkedIn, and YouTube. Simply do not talk about the
14 case in any way with anyone.

15 Second, do not read or listen to anything touching on
16 the case in any way. If anyone tries to talk to you about the
17 case, bring it to my attention promptly. Do not communicate
18 with any of the persons connected with the trial, including the
19 lawyers, the parties, or the witnesses, not even a greeting or
20 conversation unrelated to the case. They have all been
21 instructed not to communicate with you, and they also know that
22 you have been instructed not to communicate with them. So
23 simply avoid them during the trial. Nobody will be offended if
24 you do not say hello if you see somebody, and your best
25 practice is simply not to say anything.

1 Third, do not try to do any research or make any
2 investigation about the case or any aspect of the case or the
3 trial on your own. For the reasons I previously explained to
4 you during the jury selection process, you, as jurors, must
5 decide this case solely on the evidence presented here within
6 the four walls of this courtroom. This means that, during the
7 trial, you must not conduct any independent research about the
8 case, the matters in the case, or the individuals involved in
9 the case. In other words, you should not consult dictionaries
10 or reference materials, search the Internet, websites, or
11 blogs, or use any other electronic tools to obtain information
12 about the case or to help you decide the case.

13 If any of you does communicate about this case or
14 conduct any research about it in any aspect -- or any aspect of
15 it in violation of my instruction, then this may cause serious
16 consequences. Those include having to start the trial all
17 over, and it would be with another jury. And the Court could
18 hold the juror or jurors involved in contempt of court with
19 potential significant penalty or even punishment. So please
20 follow my instructions precisely. It is also your duty to
21 report to me if you observe any other juror who violates these
22 rules.

23 Importantly, do not form any opinion until all the
24 evidence is in. Keep an open mind until I instruct you to
25 start your deliberations at the very end of the case.

1 Finally, as you are all well aware, we're dealing
2 with the coronavirus pandemic. Please make sure that you
3 follow the guidance of the public health officials, which this
4 court is endeavoring to do, that is, observe social distancing,
5 wear a mask, and wash your hands frequently. We have
6 configured the courtroom and arranged for your breaks and
7 deliberations to comply with this guidance, and there are
8 plenty of masks and hand sanitizer for your use. This is for
9 everyone's protection, and we ask that you observe the rules.
10 If you have any concern in this regard as the trial progresses,
11 please let Ms. Engle, the deputy clerk, know.

12 A few notes on housekeeping. The parties estimate
13 that the trial may take approximately five up to seven days.
14 Normally, we will take a morning recess at about 10:30 or
15 10:45. We'll break for lunch at 12:30. You'll need to be back
16 at 1:45, reporting to Courtroom No. 3 across the hall where you
17 were this morning. You will gather there until we are ready
18 for you. We will start just as soon as all of you all are
19 collected, and so if you are early and we are ready to go, we
20 may start early. We will take an afternoon break at about
21 3:30, and I commit to you we will recess every day at 5:00 p.m.

22 It will be a priority to proceed with the testimony
23 during the times you are here. I will try to avoid any delays
24 as much as I can. You should know that the lawyers are coming
25 in early and staying late to handle any matters that are

1 necessary outside of your hearing so we can be as on time as
2 possible while you're here.

3 Do not loiter in the corridors of this courthouse.
4 Embarrassing contacts may occur with persons interested in the
5 case. If anyone attempts to talk with you about the case, tell
6 them it is improper for a juror to discuss the case or to
7 receive information except here in the courtroom. Do not
8 listen to that person, and it is your duty to report the
9 incident to me at once.

10 If you want to take notes during the course of the
11 trial, you may do so. Ms. Engle has given you legal pads and
12 envelopes and pencils for your use in taking notes, if that
13 helps you. However, it is difficult to take detailed notes and
14 to pay attention to what the witnesses are saying at the same
15 time.

16 If you do take notes, be sure that your note-taking
17 does not interfere with your listening to and considering all
18 the evidence. Also, if you do take notes, do not discuss them
19 with anyone before you begin your deliberations. Do not take
20 your notes with you at the end of the day. Be sure to leave
21 them in your chair. Also, do not loan your notes to anyone,
22 not even another juror; and by the same token, do not borrow
23 anyone else's notes.

24 If you choose not to take notes, remember it is your
25 own individual responsibility to listen carefully to all the

1 evidence. You cannot give this responsibility to someone who
2 is taking notes. We depend on the judgment of all members of
3 the jury. You all must remember the evidence in this case.

4 If you wish to take notes, please write your name or
5 your juror number on your envelope. Every time we take a
6 recess, please place your legal pad back in the envelope. At
7 the end of the court day, please your envelope in your seats,
8 and Ms. Engle will place them in the jury room for the evening.
9 We'll place a note on the door to the jury room so that nobody
10 goes in there other than you, and we'll have the room cleaned
11 at night, so those folks will be; but your notes will be secure
12 there. The jury room is set aside for your use and for your
13 use only. You can leave your notes in your envelopes without
14 any fear that anyone will look at them.

15 As I said, do not forget; if you have your envelopes
16 there, please write your number or your name on your envelope
17 at this time so that you know whose is whose and we won't get
18 them mixed up with anybody else's. Just write something on the
19 outside of your envelope just to indicate what your juror
20 number or name is, that would be helpful.

21 So the trial is now going to begin. First, the
22 Government will make an opening statement, which is simply an
23 outline to help you understand the evidence as it comes in.
24 Next, the Defendant's attorney may, but does not have to, make
25 an opening statement. Opening statements are neither evidence

1 nor arguments. They are merely forecasts of what the lawyers
2 think the evidence will be.

3 The Government will then present its witnesses, and
4 counsel for the Defendant may cross-examine them. Following
5 the Government's case, the Defendant may, if he wishes, present
6 witnesses whom the Government may cross-examine.

7 After all the evidence is in, the attorneys will
8 present their closing arguments to summarize and interpret the
9 evidence for you, and then I will instruct you on the law.
10 After that, and only after that, you will then retire to
11 deliberate on your verdict.

12 The Government may now give its opening statement.

13 There should be monitors for every juror.

14 Is there any juror or alternate who does not have a
15 monitor that they can see? If so, please raise your hand if
16 you cannot see one.

17 It looks like everyone can see. If at any point you
18 have trouble seeing something, raise your hand.

19 Mr. Principe.

20 **MR. PRINCIPE:** Thank you, Your Honor.

21 This is Chin Wok. China Wok is a small Chinese
22 restaurant in a strip mall on Roxboro Street in Durham, North
23 Carolina. If you were to go back in time to April 2018 and
24 open that front door, you would go inside and you would see
25 Hong Zheng and his wife, Wai Ping Chan. Her friends and family

1 call her Shirley. And you would see Hong and Shirley working
2 in their restaurant side by side, opening the restaurant in the
3 morning, cooking the food together side by side, serving the
4 customers side by side, handling the takeout orders.

5 And after the long days, the seven days a week, the
6 364 out of 365 days a year, they would close down the
7 restaurant late at night. They would get inside their minivan,
8 Hong driving and Shirley in the passenger seat, and they would
9 drive a short distance down to the road to their home on
10 Carlton Crossing Drive, riding together side by side. And they
11 would retreat to the safety and comfort of the home that their
12 hard work had afforded them, that nice big house on Carlton
13 Crossing Drive where their two children, Jade and Eastern,
14 would be waiting for them, for mommy and daddy to come home
15 after a long day of work. If you went back in time to 2018,
16 Jade and Eastern were in high school.

17 And on April 15 of 2018, at 10:10 p.m., Hong and
18 Shirley were inside that restaurant, getting ready to go home
19 for the night. And what they didn't know was that the
20 Defendant, Maurice Owen Wiley, Jr., and five other men were
21 inside of that Lincoln MKX automobile. Wiley had obtained that
22 rental vehicle from AVIS at Northgate Mall through a woman that
23 he used to rent the vehicle who gave it to him the day before,
24 who he would reimburse with money for the rentals. And he was
25 driving that vehicle, and there were five other men inside that

1 vehicle. And they had five guns: Two .40 calibers, two 9mms,
2 one .45 caliber. Wiley had a gun, a 9mm. And those guns were
3 loaded with ammunition, bullets.

4 And you will hear from a cooperator -- I am going to
5 refer to him as "the cooperator" -- and the cooperator will
6 tell you that their plan that night was to rob China Wok, but
7 they weren't going to rob them at their business. They already
8 knew where Hong and Shirley lived. They had been to the
9 restaurant days prior. They had been past their house days
10 prior.

11 And you'll see in the surveillance footage that that
12 white Lincoln leaves the parking lot before Hong and Shirley
13 get into their minivan to go home. They leave before because
14 the cooperator will tell you that they already knew where they
15 lived, and they wanted to get there first so that they could
16 catch them by surprise.

17 So there they were, Mr. Wiley and his coconspirators,
18 sitting in that Lincoln, the driver's window facing China
19 Wok -- you can see the lights in the background -- watching,
20 waiting for that moment.

21 But what Mr. Wiley didn't know at the time was that
22 that vehicle had a black box, an Infotainment system, and that
23 system was also watching and monitoring and recording data,
24 like GPS location data, that would later tell the investigators
25 exactly where that vehicle had been driven to and where it was

1 at different places and time, like breadcrumbs.

2 It also recorded things like event data: When the
3 driver side door opened in front Carlton Crossing Drive; when
4 the vehicle was put in park in front of Carlton Crossing Drive
5 on April 15, 2018, at exactly the time when the attempted
6 robbery happened.

7 It also had the ability for people who rented that
8 nice vehicle from AVIS to connect their phones, the devices we
9 carry around with us all the time, so they could play their
10 music or make hands-free phone calls. You will hear that the
11 Defendant's phone, a ZTE cell phone that was later seized by
12 law enforcement with a phone number ending in 6112, that phone
13 had been paired to that Infotainment system. It was connected
14 by Bluetooth to that Infotainment system at the moment the
15 vehicle was in front of Hong and Shirley's home.

16 When Hong and Shirley left the restaurant that night,
17 they had no idea what was waiting for them just five minutes
18 down the road. It was a short distance from China Wok to their
19 house.

20 This is Hong and Shirley's house on Carlton Crossing
21 Drive. That's where they raised their two children, Jade and
22 Eastern. That's where they sat down and had their family meals
23 at the dinner table. That driveway -- at the bottom of that
24 driveway, that is where Hong Zheng was shot in the head with a
25 .40 caliber bullet, killed by one of the robbers on April 15,

1 2018.

2 Here's how it happened. Hong and Shirley were
3 driving down Carlton Crossing Drive approaching their house.
4 Hong pulls the family's minivan into the driveway. Shirley
5 gets out of the passenger seat and starts walking to the front
6 door. This is their typical nightly routine when they come
7 home late at night from China Wok, because they had been
8 victims before. You'll hear that they had had a breaking and
9 entering at their house before. They had had a home invasion
10 at their house before, and because they had been victimized,
11 they decided that they needed to arm themselves with a handgun.
12 They bought a 9mm handgun. Hong and Shirley took lessons,
13 learned how to use it.

14 And that night, when Shirley approached the front
15 door to get the handgun from her son, while her daughter waited
16 at the upstairs window near an alarm system, what they didn't
17 know that night was that that was the night they were going to
18 need it.

19 Here's what the robbers did. When they pulled into
20 the driveway, the robbers got out of the SUV, the Lincoln that
21 was right across the street. All of them got out. Mr. Wiley
22 got out. He had a firearm. His cell phone that was connected
23 by Bluetooth disconnected from the system. Some of the robbers
24 chased Shirley to the front steps. They thought they saw her
25 with the money bag. She got the gun. She saw the robbers.

1 She fell down. She tried to put the loaded magazine into the
2 gun. She tried to fire it. It wouldn't fire. She had to rack
3 three rounds out of the gun before it would fire, and then she
4 fired at those robbers to protect herself and her children who
5 were still inside the home.

6 When those robbers were sitting in the Lincoln just
7 before Hong pulled into the driveway, they were probably
8 thinking about the money they would be counting at the end of
9 the night; but what they weren't counting on was that Shirley
10 would have a gun and that she would fire that gun to defend
11 herself.

12 Investigators would later determine that Shirley
13 fired 14 rounds from her 9mm handgun; and because she fought
14 back, those robbers fled. They got nothing. All of them got
15 back into the Lincoln. Wiley got back into the driver's seat.
16 He drove off, leaving the neighborhood. Two neighbors saw a
17 white SUV driving southbound on Carlton Crossing at a high rate
18 of speed. They fled. They thought maybe they could get away,
19 but they couldn't escape the consequences of their actions
20 forever, because as they fled, there were things they left
21 behind. Many of the witness you will hear from throughout the
22 course of this trial will be about the things they left behind,
23 the evidence they left behind, the recordings they left behind,
24 the surveillance footage that was left behind, and, most
25 importantly, the data that was left behind.

1 You will hear how crime scene investigators at
2 Carlton Crossing Drive collected 14 rounds that were fired from
3 Shirley's handgun and 13 more rounds that were fired by the
4 four handguns that were discharged by the robbers, 9mm caliber
5 shell casings, .40 caliber shell casings, .45 caliber shell
6 casings on the front porch, along the walkaway, near the
7 sidewalk in the street.

8 And because Shirley fought back, because she fired
9 her weapon at the robbers, guess what? She hit that SUV. She
10 damaged the left rear passenger door and put a bullet hole
11 through it. She caused additional damage when a bullet
12 ricocheted and struck the glass of that rear passenger door,
13 shattering the glass, leaving glass fragments in the street at
14 Carlton Crossing Drive.

15 The robbers left a blue latex glove on the front
16 porch, because that's how far they got. One of the robbers ran
17 out of a shoe, leaving his sneaker in the front yard. And as
18 the robbers fled, Mr. Wiley drove that Lincoln MKX, and he
19 drove it back to the meet spot, the place where the robbers had
20 originally gotten into the vehicle in the first place before it
21 went to China Wok, before it went to Carlton Crossing. And
22 it's approximately a 15-minute drive to the meet spot.

23 And the cooperator will tell you that on the way back
24 to the meet spot, there was a conversation in the vehicle about
25 discharging the gun and calling 911 to create a false story

1 about a drive-by shooting. And Durham Police Department
2 officers would receive a 911 call and would be sent to that
3 location only 15 minutes after the attempted robbery at Carlton
4 Crossing Drive. And when they got there, they found one of the
5 robbers that Shirley had shot in the back with a bullet wound
6 to his back. The cooperator had been shot in the wrist. A
7 third robber had been cut on his face. And when that
8 officer -- that patrol officer responded to the meet spot, they
9 saw one of those robbers who was seeking medical treatment with
10 a bullet wound to his back.

11 But at that point, the Lincoln was no longer at the
12 meet spot. Wiley had driven it to the next location, that the
13 Infotainment system would record the date, the time, the GPS
14 location. He went back to his momma's house, 1413 Maplewood
15 Drive. And that Infotainment system would record when the
16 vehicle got there, and it would record when the vehicle left
17 again, and that vehicle sat at that address for over an hour;
18 but it didn't stay there.

19 The evidence will show that Wiley next took the
20 vehicle to Chapel Tower Apartments across town. That's the
21 surveillance footage from Chapel Tower Apartments. You'll see
22 that footage when Wiley was driving the Lincoln back to Chapel
23 Tower Apartments at 12:19 a.m. on April 16. And the vehicle
24 went back to Chapel Tower Apartments because that's where
25 Taquila House lived. Taquila House is the woman that helped

1 Wiley rent the vehicles from AVIS who received money back. It
2 was reimbursement for the rentals.

3 And Taquila House, eight hours later, called 911 to
4 report that that Lincoln that she had rented from AVIS had been
5 shot up overnight on some street in Durham. She didn't know
6 how it happened, but she saw the damage, and she called 911 to
7 report it. The officer who responded, Officer Cleary, will
8 testify. And he had a body-worn camera, and that's an image
9 from his body-worn camera. And at that moment, at 8:00, the
10 very next day after the murder, it documented the damage to
11 that Lincoln MKX. It documented the license plate. It's the
12 same vehicle. There was damage: A bullet hole to the door and
13 a shattered window.

14 But after the report was taken, that vehicle didn't
15 stay there for very long, because Wiley got the vehicle back
16 and he took to Auto Glass Now in Durham. And there are
17 receipts from Auto Glass Now from April 16 when the window was
18 replaced on that rear passenger door, and that business record,
19 that data, the receipt, has the name Reese on it and a number
20 that ended in 6112 on the receipt. The Infotainment system
21 data puts the vehicle at Auto Glass Now at that time. And
22 after the glass was repaired, Wiley took it to the Amigos auto
23 repair shop. And after that, the vehicle was eventually
24 returned to AVIS at Northgate Mall.

25 But that was two more days later, on April 18, 2018.

1 And on April 18, 2018, it's not just the data or the business
2 records that will show this. Mr. Wiley admitted he had
3 possession of the vehicle on April 18 because by April 18,
4 Detective Cramer of the Durham Police Department had caught up
5 with Taquila House, and they had interviewed her once or twice.
6 And on April 18, he was at her workplace, and he was standing
7 there talking with her. And at that point she admitted that
8 she had rented vehicles for Mr. Wiley, more than one vehicle;
9 that she originally rented a red Ford Explorer on the 13th;
10 that they swapped it out for the Lincoln on the 14th; that
11 Mr. Wiley took immediate possession of the Lincoln; that he had
12 it on April 15 and told her that it had been damaged in his
13 possession.

14 And during this conversation between Detective Cramer
15 and Miss House, guess who calls from a phone number ending in
16 6112? Mr. Wiley. And during that conversation, Detective
17 Cramer recorded it, and you will hear the recording. And he
18 told Miss House that he had the vehicle currently in his
19 possession. He told Detective Cramer he had the vehicle in his
20 possession, that he was just taking it to get it fixed, that it
21 had been damaged, and he was going to return it to AVIS.

22 And then later that day, on April 18, the vehicle was
23 returned to AVIS, but it was returned outside of business
24 hours, parked in a parking spot. And the following day, on
25 April 19, is when investigators got a call from AVIS at

1 Northgate Mall, and they said, hey, the vehicle you have been
2 looking for was returned last night. So investigators went out
3 there, and this is what they found: That same Lincoln MKX, but
4 there was no more bullet holes in the door, and the window had
5 been replaced, but it only rolled halfway up.

6 So they seized that vehicle. They took it to the
7 Durham Police Department garage, and their crime scene
8 investigators began to look throughout the vehicle for
9 evidence. And guess what? Things were left behind. They
10 opened up the internal paneling of that left rear passenger
11 door; and when they did that, they saw that even though the
12 outside had been repaired, the inside still had bullet holes.
13 That evidence had been left behind. They found shards of
14 shattered glass in three different places in the vehicle. The
15 glass had been left behind.

16 They found areas of suspected blood, and they swabbed
17 those areas of suspected blood, and they sent those samples to
18 the FBI laboratory for DNA testing. They developed several
19 suspects, and they obtained DNA samples from them. An analyst
20 will come and testify, and he will tell you that, based on his
21 analysis, there is very strong support for inclusion that DNA
22 from two of the robbers, the one shot in the back and the one
23 who had the cut on his face -- was very strong support for
24 inclusion of their DNA in the swabs of blood taken from the
25 Lincoln.

1 But they also found the black box. They took the
2 black box out of the car. You will hear from the person who
3 did that and extracted the data, and you will hear about just
4 how robust that data is. And it will tell you the locations
5 and the places where the Lincoln had been driven by Mr. Wiley,
6 all the places that it had been.

7 But there's one thing that that Infotainment system
8 data will not tell you but this surveillance footage will and
9 so will the cooperator. They'll tell you how Mr. Wiley was
10 driving this red Ford Explorer on April 13, 2018, and how he
11 drove that Ford Explorer into the parking lot of the shopping
12 center where China Wok was, how he backed it into exactly the
13 same parking spot that he would park the Lincoln two nights
14 later. And there that red Ford Explorer sat, and they watched
15 and they waited, because the plan to commit the China Wok
16 robbery happened -- came together days before the attempted
17 robbery on April 15.

18 In fact, the cooperator will tell you that the plan
19 was to commit the crime that night, that they also left the
20 parking lot before Hong and Shirley left in their minivan; but
21 when they got to Carlton Crossing, the plan was to have the
22 robbers wait for them in the yard, but there was too much light
23 and thought they would be seen. So they aborted the plan that
24 night, got back into the red Ford Explorer. Mr. Wiley swapped
25 the vehicle the next day. They went back and surveilled the

1 business and the house on the 14th, and then they went back to
2 commit the crime again on the 15th.

3 You will hear about phone records that were obtained
4 from the suspects, the robbers, and how those phone records
5 were then analyzed by a CAST analyst with the FBI and how they
6 took the historical cell location data associated with those
7 phone numbers, including Mr. Wiley's phone ending in 6112. And
8 you will hear how that data places his phone connecting to a
9 cell tower near China Wok on April 13, 2018, around the time
10 when that red Ford Explorer was in the parking lot. You'll
11 hear how that phone was connecting to cell towers on April 14,
12 one near China Wok, one near Carlton Crossing Drive.

13 You will hear how on April 15, as Mr. Wiley was
14 driving the Lincoln away from the crime scene, trying to flee
15 and get away, how his phone connected to a cell tower just
16 south of the Carlton Crossing area as that vehicle was
17 traveling along the highway back to the meet spot.

18 April 15, 2018. April 13, 2018.

19 Ladies and gentlemen, you're about to hear evidence
20 in the case. You're about to hear from the witnesses that
21 heard, saw, and did the things I just described to you. A lot
22 is going to happen in this courtroom over the next couple of
23 days. You're going to hear from over 40 witnesses. Some of
24 them will be very short and brief. Others will take more time
25 and have physical exhibits, photographs, and other kinds of

1 evidence. But when this trial is over, there will only be one
2 thing left behind: Your just and truthful verdict.

3 **THE COURT:** All right.

4 Mr. Bryson.

5 **MR. BRYSON:** This trial is a contest between the two
6 parties: The Government who says that Maurice Wiley is guilty
7 of the offenses that he is charged with, and the defense, the
8 other party, who says he is not guilty of any of these charges.

9 Now, because this is a contest, there are certain
10 rules that we will follow, and the rule that I want to talk to
11 you about now is this rule:

12 The rules say that when presenting evidence, the
13 Government goes first. That's the rule. The Government gets
14 to put on their case first. It's only fair. They have the
15 burden of proof. I am not complaining, but they get to go
16 first. What that means is for the first part of this trial,
17 and to be honest with you, probably for the rest of this week,
18 you're going to hear only from Government witnesses. Now, we
19 get to ask them questions. That's called cross-examination,
20 but they will be Government witnesses.

21 And I want to alert you to this fact: For many of
22 the witnesses that they call, when they are done testifying and
23 Judge Schroeder turns to myself or Mr. Foster -- and the judge
24 will say, Do you have any questions? And there may be many
25 times when we say, no, we don't have any questions. I want you

1 to know that's because, for large parts of the Government's
2 case, we really don't dispute what witnesses are saying. The
3 Government is going to prove that this attempted robbery
4 occurred. We don't dispute that. We don't dispute that it
5 occurred. We don't dispute that it was a terrible and tragic
6 thing that occurred out there. We're not disputing that
7 whatsoever. What we do dispute is that Maurice Wiley was
8 involved; and those witnesses that connect him to it, we will
9 be questioning those witnesses very sharply.

10 And so what I want you to do is when you sit here and
11 hear us say to numerous witnesses, well, we don't have any
12 questions, Judge, I want you to know it's not because we have
13 given up, not because we don't have a defense. We have a case
14 to make. We have an argument that you need to hear, but the
15 rules say that you can't hear that for a while. And so all I
16 want to say to you at this point is this:

17 While you're listening to all these Government
18 witnesses, while you're hearing from their case, please do not
19 make up your mind; do not pass judgment on this case until you
20 have had a chance to hear from us later when the rules permit
21 us to make our case.

22 Thank you.

23 **THE COURT:** All right. The Government may call its
24 first witness.

25 **MR. GREEN:** The Government is going to call Wai Ping

1 Chan.

2 May I step outside, Your Honor?

3 **THE COURT:** Yes.

4 **MR. GREEN:** Thank you.

5 (Mr. Green stepped out of the courtroom to retrieve the
6 witness and returned.)

7 **THE COURT:** Let's swear the interpreter first.

8 (The interpreter was duly affirmed.)

9 **THE COURT:** The interpreter may stand over to the
10 side here.

11 If anybody has any trouble hearing, just let me know.

12 Good morning. If you'll take your mask off, please.

13 You can keep yours on, if you like. Thank you.

14 Would you bend the microphone, ma'am, towards your --
15 thank you.

16 **WAI PING CHAN,** GOVERNMENT'S WITNESS, being first duly affirmed,
17 at 10:35 a.m. testified as follows:

18 DIRECT EXAMINATION

19 **BY MR. GREEN**

20 Q Would you tell these jurors your name, please.

21 A (English) Wai Ping Chan.

22 Q And do folks call you Shirley?

23 A (English) Yes.

24 **THE COURT:** All right. So are we proceeding with the
25 interpreter?

1 Go ahead and interpret the questions, please.

2 And then my understanding is the witness indicated
3 she would prefer to answer in English, but you may also answer
4 through the translator, whichever you wish.

5 Pose your question again, please.

6 **BY MR. GREEN**

7 Q Do people call you Shirley?

8 A (English) Yes.

9 Q Where do you live generally?

10 A (English) 4617 Carlton Crossing Drive, Durham, North
11 Carolina 27013.

12 Q And where did you live in April of 2018?

13 A (English.) Same address.

14 **THE INTERPRETER:** The same place.

15 **BY MR. GREEN**

16 Q I'll ask if you have a business?

17 A (English) Yes.

18 Q And what is that business?

19 A (English) Chinese takeout restaurant.

20 Q And what is the name of that business?

21 A (English) China Wok.

22 Q I'm going to show you what's marked as Government's
23 Exhibit No. 2, and ask if you are familiar with what's in that
24 exhibit? There should be something on your monitor.

25 Do you see the picture?

1 A (English) That's my restaurant.

2 Q And where is that located?

3 A (English) You need the address?

4 **THE INTERPRETER:** Yes.

5 **BY MR. GREEN**

6 Q Just generally, where is it located?

7 A (English) 3825 South Roxboro Street, Durham, North
8 Carolina, 27713 Suite 124.

9 Q And that Government exhibit, is that a picture of your
10 restaurant?

11 A (English) Yes.

12 **MR. GREEN:** I'm going to move introduction of
13 Government's Exhibit 2, Your Honor.

14 **THE COURT:** Admitted.

15 **MR. GREEN:** I'd ask that it be published?

16 **THE COURT:** It may be.

17 **BY MR. GREEN**

18 Q Is the China Wok in a shopping center?

19 A (English) Yes.

20 Q And what kind of business is it?

21 **THE COURT:** Hold on just a minute. Go ahead and
22 interpret the questions. My understanding is she preferred to
23 answer in English but wants the questions interpreted.

24 **THE WITNESS:** (English) Takeout restaurant.

25 **THE INTERPRETER:** It's a taking out Chinese

1 restaurant.

2 **BY MR. GREEN**

3 Q And how long have you had that business?

4 A (Interpreted) The restaurant was opened February 2002.

5 Q And the food that's sold in that restaurant, where do you
6 get that from?

7 A (Interpreted) It come from several places. Some came from
8 New York, some came from Virginia, and some came from
9 Winston-Salem here, and we buy from other places, too.

10 **THE COURT:** Let me ask the interpreter to remove your
11 mask so we can hear you more clearly, too.

12 Thank you, sir.

13 **THE INTERPRETER:** The food come from New York,
14 Virginia, Winston-Salem, and some other small places, too.

15 **BY MR. GREEN**

16 Q And was that true in April of 2018?

17 A (Interpreted) Yes.

18 Q I'm going to show you on your monitor Government's Exhibit
19 No. 3.

20 A (Interpreted) This is a receipt from a seafood place
21 from -- in Virginia.

22 Q In Virginia?

23 **THE INTERPRETER:** Yep.

24 **BY MR. GREEN**

25 Q And I'm going to flip the page to the next page of

1 Government's Exhibit No. 3, and I'll ask if you are familiar
2 with what that is?

3 A (Interpreted.) Okay. This is a store owned by Chinese in
4 Virginia. They sell seafood and all dried food as well.

5 **THE COURT:** The court reporter is having a little
6 difficulty understanding the interpreter's English. And my
7 understanding is the witness and the parties agreed she could
8 answer in English?

9 **MR. GREEN:** Yes, Your Honor.

10 **THE COURT:** So if the interpreter would interpret the
11 question, and then you may answer in English, if you wish. If
12 you wish to answer in Mandarin, you can do that; but if you
13 want to answer in English, that's fine. We just want to make
14 sure the questions are interpreted in Mandarin.

15 So why don't you pose your last question to be sure.

16 **BY MR. GREEN**

17 Q Looking at the second page, which is on your monitor, do
18 you recognize that?

19 **THE COURT:** Can you interpret that question?

20 **THE WITNESS:** (English) Same way. You haven't
21 changed anything here. I already say that this --

22 (Interpreter and witness converse.)

23 **THE WITNESS:** (English) Okay. This is a same -- it's
24 a company I order the dry food, seafood, and meat from.

25

1 **BY MR. GREEN**

2 Q And looking at the last page of Exhibit 3, do you
3 recognize that?

4 A (English) This is from Georgia.

5 Q And do each of these exhibits -- are they related to the
6 shipment of goods that you got in your restaurant in 2018?

7 A (English) Yes.

8 **THE COURT:** Wait. Interpret the question.

9 **THE WITNESS:** (English) Yes.

10 **THE INTERPRETER:** Yes.

11 **MR. GREEN:** Your Honor, I move introduction of
12 Government's Exhibit 3.

13 **THE COURT:** Admitted.

14 **MR. GREEN:** I would ask that they be published?

15 **THE COURT:** They may be published.

16 (Interpreter and witness converse.)

17 **THE COURT:** There are no questions. Your job is
18 simply to interpret, no more, no less. All right.

19 **BY MR. GREEN**

20 Q Looking at Government's Exhibit No. 3, at the top of that
21 exhibit, is that the company where they were sending foods from
22 Virginia?

23 A (English) Yes.

24 Q And it also bears a date of March 15, 2018. Is that
25 accurate?

1 A (English) Yes.

2 Q Looking at the next page, the next receipt, at the top,
3 does that invoice also show shipment from Sandston, Virginia?

4 A (English) Yes, from Virginia.

5 Q And it looks like the date of that shipment was April 13,
6 2018?

7 A (English) Yes.

8 Q Looking at page 3 of Exhibit 3 at the top, can you tell
9 what company that was -- where that company was located where
10 you received inventory?

11 A (English) A&W Food from Allentown, Georgia.

12 Q And does it also bear a date in the right-hand side?

13 A (English) Yes.

14 Q And how often would you receive shipments from out of
15 state in your business?

16 A (Interpreted) Every week.

17 Q I'm going to show you Government's Exhibit No. 4.

18 And do you recognize that?

19 A (English) My house.

20 Q And is that the house on Carlton Crossing Drive?

21 A (English) Yes.

22 Q And does that photograph fairly and accurately depict your
23 house?

24 A (English) Yes.

25 **MR. GREEN:** I'm going to move introduction of

1 Government's Exhibit 4.

2 **THE COURT:** Admitted.

3 **MR. GREEN:** And ask that it be published?

4 **THE COURT:** It may.

5 **BY MR. GREEN**

6 Q How long had you lived in this house?

7 A (English) Sixteen years.

8 Q And who lived with you in this house?

9 A (English) My husband; my boy, Eastern Zheng; my girl, Jade
10 Zheng.

11 Q And was your husband involved in working at China Wok?

12 A (English) Yes. We worked together.

13 Q And how long had you all worked together?

14 A (English) The business opened on 2001 -- 2002. This house
15 is after few months I open the business. It's about -- it will
16 be 16 years from the time.

17 Q And did you own that business together with your husband?

18 A (English) Yes.

19 Q Describe what a day looked like in April 15, 2018, working
20 in the business.

21 (Interpreter and witness converse.)

22 A (Interpreted) The rains were hard that night, then the
23 lightning and the rain.

24 Q Ms. Chan, I would like you to describe prior to the event
25 in April -- what would a day look like in your business

1 typically? What would you and your husband do?

2 A (Interpreted) On a normal day, they will leave their house
3 around 10:40. And their house is very close to the restaurant.

4 Q And what would you do when you got to work?

5 A (Interpreted) Open the door and let the customers come in.

6 Q And how many customers might you have come in on a typical
7 day?

8 A (Interpreted) A few dozen up to 100 every day.

9 Q And how late would you stay at work?

10 A (Interpreted) On a normal day, they open at 11:00, close
11 at 11:00. On Sunday, they open at 12:00 and close at 10:00.

12 **THE INTERPRETER:** Right?

13 **THE WITNESS:** (English) 10:00 or 10:30, depends on --

14 **THE INTERPRETER:** Yeah. Sometimes 10:00, sometimes
15 10:30. It depends on the day.

16 **BY MR. GREEN**

17 Q And how many days a week did you work?

18 A (Interpreted) Seven days a week.

19 Q And how many days a year would you work up until April 18?

20 A (English) Except for Thanksgiving, we be open all day
21 long.

22 **THE INTERPRETER:** Except Thanksgiving Day, they opens
23 every day.

24 **BY MR. GREEN**

25 Q I'm going to ask to you look at Government's Exhibit No. 1

1 on your monitor.

2 Can you tell us who that is?

3 A (English) My husband.

4 Q Is this the man who would work with you every day?

5 A (English) Yes.

6 Q And where was that photograph taken?

7 A (Interpreted) This picture was taken in Wuyi Mountain in
8 Fujian Province, China, when her husband went back home to
9 visit his parents at home about three years before the
10 incident.

11 Q What is your husband's name?

12 A (English) Hong Zheng.

13 Q And approximately how old was he before April 15, 2018?

14 **THE INTERPRETER:** What's your question?

15 **BY MR. GREEN**

16 Q How old was he?

17 A (English) 42.

18 **MR. GREEN:** I'm going to move introduction of
19 Government's Exhibit No. 1, Your Honor.

20 **THE COURT:** Admitted.

21 **MR. GREEN:** And I ask it be published?

22 **THE COURT:** It may.

23 **BY MR. GREEN**

24 Q I would like to direct your attention to April 15, 2018.

25 Did you and your husband work that day?

1 A (Interpreted) Yes. On that day, she and her husband were
2 working in the restaurant.

3 Q And how late did you work that day?

4 A (Interpreted) They left the restaurant around 10:20 p.m.

5 Q Prior to that day, did you make it a habit to bring home
6 the proceeds of the business, the money that customers had paid
7 you, and bring them to your house?

8 A (English) Yes.

9 Q Do you recall if you had money from the business on this
10 occasion, on April 15?

11 A (English) Yes.

12 Q When you left, how was the weather?

13 A (Interpreted) It rained very hard. There were lightning.
14 The rain was very heavy.

15 Q Where did you go when you left your restaurant?

16 A (Interpreted) They went home directly.

17 Q And approximately how long did it take you to get home?

18 A (Interpreted) Two or three minutes.

19 Q And what happened when you pulled in the driveway?

20 **THE COURT:** Is she answering in English or in
21 Mandarin?

22 **THE INTERPRETER:** She was answering in Chinese.

23 **THE COURT:** If you would interpret as we go along.

24 **THE INTERPRETER:** Normally, her husband will pull up
25 at the bottom of the hill. But that day, her husband drive her

1 up the hill, and she was about to open the door.

2 **BY MR. GREEN**

3 Q What was your routine typically when you got home from the
4 business?

5 A (Interpreted) Normally, the husband will park at the
6 bottom of the hill, and then she went out up the hill, opened
7 the door. The children came out, hand her the gun and
8 ammunition. The gun and ammunition were kept separately in the
9 home because they worry the children might get hurt.

10 Q Why did you have a gun and ammunition?

11 A (Interpreted) They bought a gun because several burglaries
12 and robberies took place in their house. They bought a gun to
13 defend themselves. So when they bought the gun, they took
14 themselves and two of their children to get the training for
15 using the gun.

16 **THE COURT:** Before you go further, let me just ask
17 the interpreter -- when you translate, make sure you translate
18 literally what she's saying. So if she says "I", then
19 translate "I" and not put it in the third person. In other
20 words, you're literally translating what she says.

21 **THE INTERPRETER:** Okay. Yeah.

22 **THE COURT:** Thank you.

23 All right. Please proceed.

24 **BY MR. BRYSON**

25 Q On April 15, when you came home and got out of the car,

1 what happened next?

2 A (Interpreted) I went up the hill, opened the door. My son
3 came out, hand me two things. And I look up at my son's face,
4 and his face changed.

5 Q What happened next?

6 A (Interpreted) And he looked towards the one and saw
7 several people came out of white car and running with a gun in
8 their hands, and they're shooting.

9 Q What happened next?

10 A (Interpreted) They fall to the ground, and he struggled to
11 get up. I struggled to get up. And I think about my son. He
12 was inside -- he is at the door. My daughter was upstairs.
13 She was also supposed to watch what's happening outside.

14 Q What happened next?

15 A (English) When I stand up -- I know I stand up. My boy is
16 right behind me. I'm still here. He's back right behind me --
17 he's hurt or not. I saw all the five -- four, five already run
18 through close to me. At that time I don't even have a minute
19 to think. I step out from the door. I'm standing in front of
20 the door, and I try to shoot the gun. I try to pull it in,
21 pull back together. I try to shoot the gun, but my gun -- I
22 pull one time, I pull two times, several times. And I got the
23 gun, shot it up. I was standing outside. And I shoot. I
24 shoot. I shoot. I shoot.

25 Q What happened after you shot?

1 A (English) The white van -- they run -- everybody was --
2 four, five guy run into the car, and they run. And then I turn
3 around and call my kid's name: Jade, Eastern, Jade, Eastern.
4 I call my husband. I call my husband: Dangai, Dangai, Dangai.
5 And then I be running.

6 He's outside the hill in the car. I'm in between. I
7 don't know my kids is safe or not. I don't know my husband is
8 safe or not. I be running in between. I call my kids' name:
9 Eastern, Jade, Eastern, Jade. Call police. Dangai, Dangai,
10 are you okay?

11 I run through -- I run through my driveway -- my
12 husband -- driveway, and I saw there's a hole -- bullet hole go
13 through the window. And then I tried to call my husband: Open
14 the door. I can't open the door. I run back to home because
15 my -- I have an extra pair of key for the car, and I tried go
16 to the car to open my husband's way and still not work. I use
17 my hand. I tried to shake the window, shake the window. I
18 tried to open the window to call my husband because he already
19 on the car seat and over there. He's not answering me. He's
20 not answering me.

21 Q And when that -- when you fired your gun, did the robbers
22 shoot at you?

23 **THE INTERPRETER:** She said: The robbers were
24 shooting at me. The guy was firing all the time while I was
25 shooting.

1 **BY MR. GREEN**

2 Q Were you able to get inside the van?

3 **THE INTERPRETER:** Repeat, please.

4 **BY MR. GREEN**

5 Q Were you able to get inside the van with your husband?

6 A (English) I'm at the front door. My boy was handing me
7 the gun with the bullet separately to me.

8 (Interpreter and witness converse.)

9 (English) I break the window. There's a neighbor from
10 across street. He run over to help me -- to help me. I do go
11 inside -- inside the car and was holding my husband's hand.
12 His hand was -- first, from beginning, I hold my husband's
13 hand. His hand is cold, and I keep calling my husband's name:
14 Dangai, Dangai, don't scare me.

15 And then later, there's a neighbor's wife. She came to do
16 CPI for my husband. His hand get warming up again. I felt,
17 oh, my husband, he came back. My husband, he come back.

18 Q Did he come back?

19 A (English) He never came back.

20 His last sentence is from the first time the van -- the
21 van was coming down there. He tried to moved a little bit, but
22 my -- looking at him, the reason is I'm asking, What happened?
23 He was telling me if I move a little bit -- because outside is
24 raining, heavy raining. I can -- they can watch me walking to
25 the front door. That's all I hear from him at that night. I

1 lost my husband at that night. My family lost him at the
2 night.

3 Q How long was your business closed after this happened?

4 A (Interpreted) My restaurant was closed for about one
5 month. I don't remember exactly --

6 **THE WITNESS:** (English) More than a month. I don't
7 want to remember everything. I want the time be stopped.

8 **MR. GREEN:** That's all the questions I have.

9 **THE COURT:** Any examination?

10 Cross -- Wai Ping Chan

11 CROSS-EXAMINATION

12 **BY MR. BRYSON**

13 Q The night of the robbery, you did not bring any money home
14 from the restaurant; correct?

15 A (Interpreted) I carried the money home. Every day we make
16 money, we take it home.

17 Q When you bring the money home, it's for the family to
18 keep?

19 A (Interpreted) The restaurant and my home are both not
20 safe, but I bring home the money. I feel a little bit safer.

21 Q But you keep the money that you bring home?

22 A (Interpreted) Yes. They take it home.

23 Q On April 19, four days later, Detective Cramer from the
24 Durham Police Department came to your home; correct?

25 A (Interpreted) I don't remember how many days after, but I

1 do remember they came to ask me some questions.

2 Q And when he came to your home, you knew he was a Durham
3 police officer; correct?

4 A (Interpreted) They did tell me they were police officer.

5 Q And they were investigating the robbery; correct?

6 A (Interpreted) I don't know if they were investigating the
7 robbery, but I just know my husband died. My home is break up.

8 Q You did answer Detective Cramer's questions?

9 A (Interpreted) I answered the detective's questions to help
10 him catching the bad guys.

11 Q And you told Detective Cramer that you had not brought any
12 money from the business home that night?

13 A (Interpreted) My everyday business is money come in and
14 money come out, and the remaining we brought home.

15 Q Here's my question. My question is: Did you tell
16 Detective Cramer that you did not bring any money home from the
17 business that night?

18 A (English) I really can't remember exactly does Cramer, the
19 police officer, ask me this question or not.

20 **MR. BRYSON:** Those are my questions?

21 **THE COURT:** All right. Any redirect?

22 **MR. GREEN:** No, Your Honor.

23 **THE COURT:** All right. Thank you. You may step
24 down, ma'am.

25 **MR. GREEN:** May this witness be released, Your Honor?

1 **THE COURT:** Any objection?

2 **MR. BRYSON:** No objections.

3 **THE COURT:** She may be released from her subpoena.

4 (At 11:12 a.m., witness excused.)

5 **THE COURT:** All right. Ladies and gentlemen, we're
6 going to take our morning break. This would be a good time to
7 do that. If you're taking notes, please put your notepads in
8 your envelopes. Leave your envelopes in your chairs. They
9 will be safe here.

10 We'll take a break for 20 minutes. That will give
11 you an opportunity to go back across the hall, use the
12 facilities.

13 Remember all my admonitions to you. So that I don't
14 have to read two pages of admonitions to you, everything I told
15 you in my jury selection process and then all the admonitions I
16 just read to you in my preliminary charge I am going to call my
17 standard admonitions to you, which include not talking about
18 the case, not doing any research, et cetera, and reporting to
19 me if anybody does. That's for your own protection and for the
20 protection of the parties and for the system.

21 So simply take a break, relax. We'll start back
22 promptly 20 minutes later with our next witness. Leave your
23 envelopes in your chairs, and Ms. Engle will escort you to the
24 jury room.

25 Everybody else please remain in the courtroom until

1 the jurors are safely in the jury room.

2 Please watch your steps. There are some cables
3 there. We are going to get those taken care of shortly.

4 (The jury departed the courtroom at 11:14 a.m.)

5 **THE COURT:** Everybody may be seated, please. Give
6 them a moment just to get across the hall.

7 All the jurors have left the courtroom, let the
8 record reflect.

9 Okay. Do we have any more witnesses with Mandarin
10 translators?

11 **MR. GREEN:** No, Your Honor.

12 **THE COURT:** All right.

13 Any questions -- any objection to the preliminary
14 charge?

15 **MR. GREEN:** Not from the Government.

16 **THE COURT:** Defendant?

17 **MR. BRYSON:** Your Honor, I did just want to point
18 this out. It's a minor point, but I noticed on page 6, when
19 you were instructing on aiding and abetting, under the first
20 count, instead of -- it says Count Two and Four. As I recall,
21 you said, Count One and Four.

22 **MR. GREEN:** I heard "Two" and "Four" when you said
23 it. Maybe you misheard it then.

24 **THE COURT:** All right. The court reporter says I
25 said "Two" and "Four"; is that correct?

1 **THE COURT REPORTER:** No. You said Two and Four
2 first, One and Four second, and then third time, Two and Four.

3 **THE COURT:** Do you want me to correct that or not?

4 All right. Having heard nothing, I will correct it.
5 So I will let them know.

6 Let me also, for the record, say since all folks
7 are -- jurors are out of the courtroom, in terms of the jury
8 composition, I have counted five members of the jury who are --
9 appear to be African-American. That's Juror No. 4, No. 5,
10 No. 7, No. 10, and No. 11.

11 Any disagreement about that?

12 **MR. GREEN:** No, Your Honor.

13 **MR. BRYSON:** No. Are you just talking about the 12?

14 **THE COURT:** Yes, the 12. I don't believe any
15 alternates are African-American, is there?

16 **MR. BRYSON:** I thought Ms. Slade was?

17 **MR. GREEN:** That was my perception.

18 **THE COURT:** You're correct. Ms. Slade is
19 African-American. Those are all the members of the jury that
20 are African-American.

21 **MR. FOSTER:** Your Honor, you asked about objections
22 to the preliminary instructions you gave to the jury. I just
23 want to preserve our objection that we made earlier to the
24 instruction on Count Three about the Hobbs Act robbery being a
25 crime of violence.

1 **THE COURT:** I understand. That's preserved. I was
2 more interested in whether I made a mistake. Apparently, I
3 did, and I will correct that when we come back.

4 Okay. Let's take a break. We'll see you in 15
5 minutes since I told them 20.

6 (Proceedings recessed at 11:18 a.m.)

7 (Proceedings called back to order at 11:37 a.m.)

8 (The Defendant was present.)

9 **THE COURT:** All right. Please bring the jury in.
10 (The jury returned to the courtroom.)

11 **THE COURT:** You may be seated, please.

12 Ladies and gentlemen, when I read the preliminary
13 charge and I mentioned the aiding and abetting, I indicated
14 that there were two counts, Counts Two and Four, that had
15 aiding and abetting charges. At one point in my comments, I
16 may have inadvertently said Counts One and Four, or something
17 other than Two and Four. I meant to say Counts Two and Four.
18 Those are the two counts that have the aiding and abetting,
19 just so that's clear.

20 The Government may call its next witness.

21 **MR. PRINCIPE:** Thank you, Your Honor. The Government
22 calls Crystal Rodriguez.

23 **CRYSTAL RODRIGUEZ,** GOVERNMENT'S WITNESS, being first duly
24 affirmed, at 11:40 a.m. testified as follows:

25 **THE COURT:** You may remove your mask for your

1 testimony, please.

2 Please proceed.

3 DIRECT EXAMINATION

4 **BY MR. PRINCIPE**

5 Q Would you please state your name.

6 A Crystal Rodriguez.

7 Q And who do you work for, Ms. Rodriguez?

8 A For Durham Emergency Communications Center.

9 Q How long have you worked there?

10 A About six months now.

11 Q Okay. And are you familiar with the records that are kept
12 by that agency and the manner in which they are kept?

13 A Yes, I am.

14 Q And did you -- can you describe, generally speaking, what
15 happens when a person calls 911 and that call is routed to the
16 Durham Communications Center?

17 A Well, our 911 dispatchers -- well, call-takers, they take
18 the call and then they route it, and they send the appropriate
19 person to help to aid them.

20 Q Okay. And so are those people in communication with the
21 people who place the 911 calls?

22 A Yes.

23 Q Do they receive any information on a computer screen in
24 front of them when a 911 call is routed to the 911 operator?

25 A Yes.

1 Q What kinds of information do they get?

2 A We have something called the CAD report. It's a
3 computer-aided dispatch, and we input the entry for the
4 dispatcher, whoever is dispatched to the call.

5 Q And when you say "dispatched to the call," you're
6 referring to the police officers typically?

7 A Yes, police officers, EMS, fire.

8 Q Okay. And then are there certain things that 911 call
9 operators are trained to do or information they are trained to
10 provide to people who might be calling in an emergency?

11 A Yes, they are trained. They are trained to give CPR
12 orders over the phone and other training mechanisms.

13 Q Okay. And are 911 calls recorded?

14 A Yes.

15 Q And are they stored for some period of time?

16 A Yes. State law requires 911 calls be stored and preserved
17 for 30 days.

18 Q Okay. And are these 911 recordings kept in the ordinary
19 course of business?

20 A Yes.

21 **MR. PRINCIPE:** May I approach the witness, Your
22 Honor?

23 **THE COURT:** Yes.

24 **BY MR. PRINCIPE**

25 Q I'm showing you a disk that's marked Government's

1 Exhibit 7. Do you recognize that disk?

2 A Yes, I do.

3 Q And did you have a chance to look at the contents of that
4 disk?

5 A Yes, I did.

6 Q And are there five audio recordings on the disk?

7 A Yes, there are.

8 Q And do you recognize those five audio recordings to be
9 authenticate 911 calls that were placed to the Durham City
10 Communication Center on April 15, 2018?

11 A Yes, I do.

12 Q Now, three of those calls, were they placed from callers
13 near Carlton Crossing Drive?

14 A Yes, they were.

15 Q And were two of those calls placed from callers near
16 Driver Street?

17 A Yes.

18 **MR. PRINCIPE:** Your Honor, Government moves to
19 introduce Government's Exhibit 7 into evidence.

20 **THE COURT:** Admitted.

21 **MR. PRINCIPE:** No further questions.

22 **THE COURT:** Any examination?

23 **MR. FOSTER:** No, Your Honor.

24 **MR. GREEN:** May the witness be released?

25 **THE COURT:** Any objection?

1 Q And describe that house for the members of the jury.

2 A I mean, it's like a typical family house. There's
3 rooms -- like, four rooms, and, I mean, I don't know how you
4 would want me to explain, but it's just like --

5 Q Sure. If you look at your monitor -- I want you to look
6 at Government's Exhibit 5.

7 A Is it on?

8 Q It should be coming up.

9 Do you see it?

10 A Yes.

11 Q What is that a photograph of?

12 A It's the house.

13 Q And the house where you lived?

14 A Yeah, it is.

15 Q And with regard to Government's Exhibit No. 5, is that an
16 accurate depiction of your house as it appeared in April, 2018?
17 Do you recall?

18 A Yeah, I mean, there were -- there weren't a lot more
19 greens -- the trees were basically, like, a little bit dead at
20 that point, but that's about it.

21 **MR. GREEN:** All right. I am going to move
22 introduction of Government's Exhibit 5, and ask it be
23 published?

24 **THE COURT:** It's admitted. You may publish it.

25

1 **BY MR. GREEN**

2 Q Now, did your family have a routine when your parents came
3 home from working at the China Wok?

4 A Not at first, but it was towards the latter parts of
5 living there where the routine started.

6 Q And describe when that started.

7 A I can't give you an exact date, but it was after the -- it
8 was after they, like, robbed us or burglarized our home a
9 couple of times, but it's been some time after that where we
10 decided, okay, we need this routine just to keep everyone safe.

11 Q And your house had been robbed before?

12 A It's been broken into once when we weren't there.

13 Q And was there another time?

14 A And then the other time was at the restaurant when -- it
15 was a while back.

16 Q Did your family decide to get a firearm?

17 A Yeah.

18 Q Could you describe for the members of the jury what you
19 know about that?

20 A It was a handgun, a FNS-9, and then the other one was a
21 rifle, which I can't recall the exact -- exactly what it is.
22 All I know is it was just a rifle.

23 Q And with regard to the handgun, did you practice shooting
24 that?

25 A I shot it a couple of times at the range.

1 Q And did your father?

2 A Yeah, he was there with me.

3 Q And what about your mother?

4 A My mother was working most of the time. I don't think
5 she's ever had -- she's not experienced with that firearm.

6 Q Did -- with regard to this routine, when your parents came
7 home, usually what time of night would they come home?

8 A Sometime around after 10:00 on, like, a weekday.
9 Sometime, like, 10:00 to 11:00 on, like, weekdays, yeah.

10 Q And describe the routine that had developed.

11 A So, basically, they would give me a call when they drive
12 home, and then they'll be, like, we'll be there in, like, three
13 to five minutes and just have everything ready. That's when I
14 knew I had to go, like, get the guns and stand by the door and
15 wait for them.

16 Q And how many times had you all had this routine before the
17 events of April 15?

18 A It's been too long to count. There's been plenty of
19 times. It's just been, like, a standard routine at that point.

20 Q And what would happen specifically with regard to the
21 routine?

22 A Normally, it would be either my mother or my father will
23 walk in first while the other one sits in the car, and I will
24 hand the firearm off to them, and then they will wait outside
25 for the other one to come inside the door.

1 Q And was the firearm loaded at that time?

2 A No, it's unloaded in my hands.

3 Q When you described that, when you mean unloaded --

4 A It means, like, the magazine, it's not in the chamber yet.

5 Q Okay. So the magazine is separate than the actual
6 firearm?

7 A Yeah.

8 Q And so when they come to the door after calling you, you
9 would do what with that?

10 A I will hand it over to them, and then I will either take
11 their bags or usually they bring home food. So then I'll grab
12 the food from them, and then hand them the firearm.

13 Q And what would happen after that -- what was the routine
14 after one of the parents got the firearm and you got the bags?

15 A I will usually just set up, like, the dinner table if it's
16 usually stuff to eat, and then I just assume it would be,
17 like -- it would be, like, normal, and they would walk in
18 afterwards.

19 Q Directing your attention to April 15, 2018, do you recall
20 that day?

21 A Uh-huh.

22 Q And were you at home?

23 A I was at home.

24 Q Was your sister with you?

25 A She was upstairs.

1 Q And was that part of the routine for her to be upstairs?

2 A She will watch through the window from an upstairs room.

3 Q And what would she be watching for?

4 A Just that they get in and that everything is okay.

5 Q Was there an alarm up there?

6 A There is an alarm system upstairs.

7 Q Did your home also have video?

8 A We had a camera that was positioned to capture whatever
9 comes through the front door.

10 Q On April 15, 2018, do you recall your parents coming home?

11 A Yeah. It was a rainy day, and they were driving home.

12 Q Did they call you first? Did someone call you and let you
13 know they were coming?

14 A Either they called me or my sister to let me know that
15 they were coming home, and so I'd just get everything ready.

16 Q And what did you do?

17 A I got the firearms and then just stood by the door waiting
18 for them.

19 Q And what happened next?

20 A I saw my mom walk up first, but then right as she got up
21 to the top steps and was about to enter the door, there was a
22 car in the background where, like, the door is open and then
23 there were some people, like, to the side of us that started,
24 like, scrambling and running towards the front.

25 Q Can you describe in detail the car you saw?

1 A I can't describe in detail unless -- it was too dark to
2 see. All I know is it was just in the background.

3 Q And how many people did you see?

4 A That was the first car, and then I saw another one, like,
5 drive by after, like -- I'm pretty sure I saw two cars.

6 Q And what about the second car you saw?

7 A I can't give -- like, I don't know exactly. I just saw it
8 drive through. It was -- about at that time I just -- I had to
9 leave.

10 Q And do you recall how many people you saw?

11 A I saw the doors open on the cars. So I saw, like, at
12 least three or four doors open, and then there was at least,
13 like, about three people to the side of us. About seven to
14 eight people.

15 Q Do you recall how they were dressed?

16 A It was too dark to see, but they were also dressed in dark
17 clothing.

18 Q What happened when you handed your mother the firearm and
19 the magazine?

20 A I handed her the firearm and magazine. She tossed me the
21 food. And then as I -- as we were in the process of doing
22 that, somebody was already, like, on the front steps. So I
23 tried to close the door. I shoved her to the ground so -- to,
24 like, avoid any direct line of fire before I just ran off to
25 find safety for myself.

1 Q What did you hear?

2 A I heard some noises, and then I heard the first gunshot,
3 which was not from the FNS.

4 Q What did you hear next?

5 A A series of gunshots and then, like, glass breaking, a
6 couple shots.

7 Q I want to show you Government's Exhibit No. 6. Is that on
8 your screen?

9 A Yep.

10 Q Do you recognize what that is?

11 A Yeah, that's the FNS.

12 Q And is that the gun you handed your mother?

13 A Yes, sir.

14 Q And where is that depicted? Do you recognize the room?

15 A That's my mom's room where she would sleep.

16 **MR. GREEN:** Your Honor, I will move introduction of
17 Government's Exhibit No. 6.

18 **THE COURT:** Admitted.

19 **MR. GREEN:** I ask that it be published?

20 **THE COURT:** You may.

21 **BY MR. GREEN**

22 Q Is that object there on the bed the firearm you just
23 described?

24 A Yep.

25 Q And is that the firearm you handed your mother?

1 A Uh-huh. Yes, sir.

2 Q And do you recall the caliber of that firearm?

3 A I can't recall exactly. I'm pretty sure it's a 9mm.

4 Q What happened after you heard the gunshots? What do you
5 recall?

6 A I was already running to find, like, some cover when I had
7 already saw them once I had no weapon to defend myself. So I
8 was already trying to find kind of cover that's not, like, the
9 front door where it's not, like, a safe spot if something was
10 to happen.

11 Q All right. I'm going to show you Government's
12 Exhibit No. 8.

13 (Government's Exhibit No. 8 was played.)

14 I'll pause it. Can you see that on your screen?

15 A Yeah.

16 Q Do you recognize what that is?

17 A Yeah, that's the camera that captures partially what comes
18 through the front door.

19 Q And you've seen this video before?

20 A Yeah.

21 Q And is that a video of the events from that camera's angle
22 on 4/15/2018?

23 A Yeah.

24 **MR. GREEN:** Your Honor, I would ask that they be
25 published -- this exhibit be moved into evidence, Exhibit

1 No. 8, and ask that it be published?

2 **THE WITNESS:** That's fine.

3 **THE COURT:** Any objection?

4 **MR. BRYSON:** No.

5 **THE COURT:** All right. It's admitted. It may be
6 published.

7 (Government's Exhibit No. 8 was played.)

8 **BY MR. GREEN**

9 Q Looking at Government's Exhibit 8, can you describe what
10 we're looking at?

11 A Yeah, that was me looking through the blinds just to make
12 sure that that was my mom coming up the steps first; and then
13 when I saw her come up the steps, that's when I decided to open
14 the door.

15 Q And as we play this video, behind us, if we're standing
16 where the camera is, what is the room that's located in?

17 A That's like -- it's just where, like, people would sit
18 down just, like, to have talks and stuff. It wasn't, like, a
19 specific room. It's just the downstairs, like, where people
20 would just sit down and just chill.

21 Q Where is your sister?

22 A She's upstairs.

23 Q Thank you.

24 **MR. GREEN:** Your Honor, I would like to play the
25 exhibit.

1 **THE COURT:** All right.

2 (Government's Exhibit No. 8 was played.)

3 **BY MR. GREEN**

4 Q At the beginning of the exhibit, there's a bag that hits
5 the floor.

6 Do you recall what that bag was?

7 A That was the food that they brought home that day.

8 Q That your mother gave you?

9 A Yeah.

10 Q And had you at that point handed her the firearms as
11 you -- as we see?

12 A Yeah, uh-huh.

13 Q After you heard the gunshots, what's the next thing you
14 did?

15 A I didn't do anything else. I was just hiding, just trying
16 to wait it out.

17 Q Did you call 911?

18 A I tried to call 911, but my -- no, no. Sorry. I was
19 waiting until everything was over. I don't think I had my
20 phone on hand at the time. And then I know my sister was
21 dialing for 911, but the calls weren't, like, running through
22 for some reason.

23 Q Do you recall speaking to an operator?

24 A Yes, later on I recall. Like, when I had my phone, when I
25 actually could get the call through, I was trying to, like,

1 tell them, like, get over here. It was, like, just -- yeah, it
2 was later on, though.

3 Q I'll ask if -- after you heard the gunshots, did you go
4 outside?

5 A I did not go outside. I was -- after the initial round of
6 gunshots was over, the gunfire was over, I was running upstairs
7 to, like, secure the rifle.

8 Q And what was your -- what do you recall about what your
9 mother was doing?

10 A She was outside. And afterwards, she noticed that my
11 father was -- the car was, like, rolled down, like, on the
12 bottom of, like, basically where the street was, and he wasn't
13 responding. And so she ran in to call us to, like, bring a
14 towel or bring something to help him and call 911 and let them
15 know.

16 Q And you did?

17 A I did, as I was trying to get the rifle.

18 Q Were your -- do you know if any of your neighbors had at
19 that point come outside?

20 A I can't recall their exact address, but I know that one of
21 my neighbors came out to try to perform CPR on my dad, and then
22 the other ones -- I can't tell how many people were out there
23 since I wasn't out there initially.

24 Q I'm going to play for you an excerpt from a call, and I
25 want to see if you recognize your voice on that call.

1 **MR. GREEN:** And this is from Government's Exhibit
2 No. 7, Your Honor.

3 (Government's Exhibit No. 7 was played.)

4 **THE WITNESS:** That's my voice.

5 **BY MR. GREEN**

6 Q You do recognize that as your voice?

7 A Yeah.

8 Q This is the call in which you attempted to talk to the 911
9 operator?

10 A Yeah.

11 **MR. GREEN:** Your Honor, I'm going to play one of the
12 files on Government's Exhibit No. 7 that's been identified by
13 the witness.

14 (Government's Exhibit No. 7 was played.)

15 **BY MR. GREEN**

16 Q Did the ambulance come?

17 A Yeah.

18 Q And when did you find out your father had been killed?

19 A We were -- I mean, it was -- we already knew at that
20 point, but we didn't want to believe it. I, like -- I already
21 knew. It was, like -- like, I didn't need them to tell me or
22 anything.

23 **MR. GREEN:** That's all the questions I have.

24 **THE COURT:** Any cross?

25 CROSS-EXAMINATION

1 **BY MR. BRYSON**

2 Q The gun and the magazine you kept separate; is that
3 correct?

4 A Yes, sir.

5 Q And so when you carried them to the door, you would carry
6 one in one hand and one in the other; is that correct?

7 A It would be one in one hand and one in the other, but then
8 when I am trying to grab for the bag, it would be, like,
9 clamped together, like, how you hold, like --

10 Q So did you actually put the magazine --

11 A No.

12 **MR. BRYSON:** Can you bring up Government's 5 for me,
13 please?

14 **BY MR. BRYSON**

15 Q Can you look at your monitor?

16 A Yeah.

17 Q And do you see Government's Exhibit 5 there?

18 A Yeah.

19 Q That's a picture. There's actually two houses in this
20 picture; is that correct?

21 A Yeah.

22 Q Yours is the one on the left; is that right?

23 A Far left, yep.

24 Q Okay. And you're saying that the leaves on the trees in
25 this photograph are thicker than they were on the night of

1 April 15. Is that what you're saying?

2 A I can't tell you clearly. It was just too dark to,
3 like -- where I could see, like, all the leaves.

4 Q Okay. You don't know when this picture was taken;
5 correct?

6 A I don't. It looks like it was, like, the following
7 morning or sometime.

8 Q All right. So you wouldn't have any dispute that the
9 leaves, as they are depicted in this picture, would have been
10 consistent with the way they were on the night of April 15;
11 correct?

12 A I just couldn't see, like, at night when you're trying to
13 look out that they are there. It looks a lot more different
14 than that.

15 Q Okay. And when you were talking to the 911 operator, you
16 indicated that you had seen a black car out there; correct?

17 A Yeah, like I said, it was too dark.

18 Q Okay. And -- well, on the 911 call you actually described
19 it as a black Honda-type car; correct? Is that yes?

20 A I said Honda, yep.

21 Q All right.

22 **MR. BRYSON:** Thank you.

23 Those are my questions.

24 **THE COURT:** Any redirect?

25 **MR. GREEN:** No, Your Honor.

1 **THE COURT:** You may step down, sir.

2 **MR. GREEN:** May the witness be released?

3 **THE COURT:** Any objection?

4 **MR. BRYSON:** No objection.

5 **THE COURT:** He may be released.

6 (At 12:13 p.m., witness excused.)

7 **THE COURT:** Call your next witness.

8 **MR. GREEN:** Jade Zheng.

9 **JADE ZHENG,** GOVERNMENT'S WITNESS, being first duly affirmed, at
10 12:13 p.m. testified as follows:

11 **THE COURT:** You may remove your mask, ma'am, while
12 you testify.

13 Please proceed.

14 DIRECT EXAMINATION

15 **BY MR. GREEN**

16 Q Would you tell the jurors your name.

17 A My name is Jade Zheng.

18 Q And who is your mother?

19 A My mom is Wai Ping Chan.

20 Q Who is your brother?

21 A Eastern Zheng.

22 Q And who is your father?

23 A Hong Zheng.

24 Q I'm going to ask you whether in the months prior to
25 April 15, 2018 -- did your family have a routine when your

1 parents came home from work?

2 A We did.

3 Q And do you know why that routine developed?

4 A Yes, it's because we had been targeted so many times, we
5 wanted to protect ourselves.

6 Q And describe generally -- when would your parents come
7 home from work?

8 A Usually around 10:30, I believe, 10:30 or 11:00 or 11:30.

9 Q And what would happen when they'd leave the restaurant?

10 A When they leave the restaurant, my mom would give me a
11 call, letting me know that she's coming home. And then my
12 brother and I would get ready at home to wait for them to come
13 home.

14 Q And what was required?

15 A So my brother would get the gun out and get ready, and I
16 would go into my brother's room and look out the window and
17 watch as they come up the driveway and get him.

18 Q I'm going to show you what's been marked as Government's
19 Exhibit No. 9 on your monitor in front of you. It will flash
20 up in a minute.

21 A Okay.

22 Q Do you recognize Government's Exhibit No. 9 as the
23 photograph of your home?

24 A I do.

25 Q And would you wait on the second floor?

1 A Yes, second floor.

2 Q Do you see the windows in which you would look out?

3 A Yes.

4 Q And could you -- let me ask this: Is it the windows above
5 the garage or above the second floor main building?

6 A Above the second floor in the top right.

7 Q All right.

8 **MR. GREEN:** Your Honor, I am going to move
9 introduction of Government's Exhibit No. 9?

10 **THE COURT:** Admitted.

11 **MR. GREEN:** And ask that it be published?

12 **THE COURT:** You may.

13 **BY MR. GREEN**

14 Q So you've indicated in the top right-hand on the second
15 floor there is a set of windows?

16 A Yes.

17 Q Is that where you would wait?

18 A Yes.

19 Q And what would you do while waiting?

20 A I had a key fob for our security alarm, and I would have
21 my hand over the siren one just in case something would happen,
22 and I would have my phone ready in case I would need to call
23 the cops.

24 Q And were you doing that on April 15, 2018?

25 A I was.

1 Q Did your mom call and say they were on the way?

2 A She did.

3 Q Did you alert your brother?

4 A Yes, I did.

5 Q Did he get the pistol?

6 A Yes.

7 Q Was there also a rifle in your house that you all had
8 purchased?

9 A There was a larger gun, but that was stored away.

10 Q Do you recall your parents -- do you recall anything about
11 the weather that night?

12 A Yes. It was horrible weather. It was really raining, and
13 it was -- it was really bad weather, I just know that.

14 Q Do you recall what time it was roughly when your parents
15 came home?

16 A I do not. But, usually, they would get home around 11:00,
17 and on Sundays, they would get home around 10:00 or 10:30, I
18 believe.

19 Q And what day was the 15th; do you recall?

20 A It was a Sunday.

21 Q Did you go upstairs to look out the window?

22 A I was already upstairs. My brother was downstairs.

23 Q Do you recall them coming home?

24 A I do.

25 Q Would you tell the jurors what you remember?

1 A Yes. I remember my parents pulling up to the driveway,
2 and my dad stopped closer to the walkway for my mom to get out
3 since it was horrible weather. And as she was going up, I was
4 thinking, okay, my mom is safe. And I look over, but I heard
5 gunshots, and I was really worried. So I hit the alarm button,
6 and I stepped away from the window for my safety, and I called
7 the cops.

8 Q What do you recall seeing, if anything?

9 A Because it was very dark out and there's a tree blocking
10 my view, I did not see anything other than my parents pulling
11 up to the driveway and my mom walking up to the steps.

12 Q After you heard the gunshots, what did you do?

13 A I pressed the siren alarm on my key fob for the security
14 system, and I tried calling the cops.

15 Q How many gunshots did you hear?

16 A I don't recall, but I do know there was a lot of gunshots.

17 Q Were you able to get through to 911?

18 A No. I tried so many times, but none of the calls would
19 get through.

20 Q What's the next thing you remember?

21 A I remember my -- I think my mom went out -- stepped out
22 and started firing back to protect us, and I'm on the phone
23 trying to call the cops. It wouldn't work. I screamed out to
24 my brother, "I'm not able to reach the cops." And that's what
25 I remember from then.

1 But after the criminals fled the scene, my mom came up --
2 my mom walked up to the house and told me, "Call the cops."
3 Call my neighbor, which is my friend from school, Alicia, her
4 mom, to get help. And I am telling my brother, "Hey, I am not
5 being able to call the cops. Can you try? I am going to try
6 calling Alicia's mom."

7 Q Did you?

8 A I did, but it didn't work. It didn't go through.

9 Q What happened next?

10 A What happened next was my brother was getting on the call,
11 so I stopped calling. I didn't want to interrupt any lines.
12 He said his call got through; but as he was talking, his call
13 got disconnected.

14 Q Did you all try again?

15 A I'm sorry?

16 Q Did you try and call again?

17 A He did, but I didn't. I don't believe I did. I don't
18 recall. Sorry.

19 Q In these moments, what are you thinking?

20 A I was thinking, "Is my dad okay? Is my mom okay? Are we
21 going to be okay?" because my mom was outside trying to help my
22 dad.

23 Q Could you hear your mother?

24 A Yes. She was screaming, and she came into the house.

25 She's, like, "Your dad's hurt. I am going to keep trying to

1 help him."

2 Q Did the police or ambulance come?

3 A Not until a very long time.

4 Q Did your neighbors come?

5 A They did. Alicia, who is a friend of mine, her dad came
6 to help, and her mom came to do CPR on my dad.

7 Q Is Alicia's dad David?

8 A Yes.

9 Q What happened next?

10 A After my -- Alicia's mom and dad came, we were in the
11 house waiting for the cops to come. And that's all I remember
12 was when they came, and we were in the house waiting as the
13 ambulance came, but they didn't come until after the cops came.

14 Q Where was the van with your father?

15 A Down at the bottom of the driveway.

16 Q Did it move?

17 A No. Well, he -- when he pulled up to the driveway, he
18 honked the horn, and that's -- I guess when he got shot, he was
19 at the bottom of the driveway. I just remember him being at
20 the top of the driveway, and after the accident, he was at the
21 bottom of the driveway.

22 Q You heard him honk the horn?

23 A Yes, he was honking the horn to let us aware that there's
24 people targeting us.

25 Q And then you heard the gunshots?

1 A Well, the gunshots and the horn was at the same time.

2 Q How long was your father in the van?

3 A Well, he was in there the whole time. He didn't step out
4 of the van.

5 Q And did -- when did you find out that your father had
6 passed?

7 A When -- it was -- I would say, like, a very -- it was a
8 very long time afterwards that we were informed that my father
9 had passed.

10 **MR. GREEN:** That's all the questions I have.

11 **THE COURT:** Any cross?

12 **MR. BRYSON:** No questions.

13 **THE COURT:** All right. You may step down, ma'am.
14 You can put your mask back on, please.

15 **THE WITNESS:** Thank you.

16 **MR. GREEN:** May this witness be released?

17 **MR. BRYSON:** No objection.

18 **THE COURT:** Yes, she may.

19 (At 12:24 p.m., witness excused.)

20 **MR. GREEN:** May we approach, Your Honor?

21 **THE COURT:** Yes.

22 (The following proceedings were had at the bench by the
23 Court and Counsel out of the hearing of the jury:)

24 **THE COURT:** Yes, Mr. Green?

25 **MR. GREEN:** The next witness is going to be

1 Mr. Turner. I believe there is a video that is going to take
2 some time to play -- a couple of videos. So I don't know if
3 this is an appropriate time to break, if the Court -- I am just
4 telling you the next witness is going to be about 25 minutes
5 and --

6 **THE COURT:** All right. We can stop five minutes
7 early, and we'll just start five minutes early afterwards.

8 **MR. GREEN:** I'm sorry. And then regarding the
9 witnesses, we did keep them excluded, the family, but the
10 last -- both Shirley and the two children, I believe,
11 consistent with your order, I have told them that they may now
12 return to the courtroom and watch the proceedings if they
13 choose to.

14 **THE COURT:** Is that acceptable?

15 **MR. BRYSON:** Yes.

16 **THE COURT:** All right. Thank you.

17 (End of bench conference.).

18 **THE COURT:** All right. Ladies and gentlemen, it's
19 almost time for our break, and it would make more sense to stop
20 right here. And then we'll start with a new witness when we
21 come back.

22 So please put your notepads in your envelopes. Leave
23 your envelopes in your chairs. Remember all my admonitions to
24 you in my standard admonition: Don't do any research. Don't
25 discuss the case. You have not heard all the evidence. Keep

1 an open mind. Remember all my admonitions.

2 I think it's a pleasant day outside. So go out and
3 get yourself something to eat, and then please be ready to go
4 across the hall in Courtroom No. 3 at 1:45. All right. And if
5 everybody is ready and we're good to go at that point, we'll
6 start at 1:45. As soon as you all are collected, we'll be good
7 to go.

8 Please be careful as you go outside, and we look
9 forward to seeing you then shortly. Remember my admonitions.
10 We'll see you at 1:45 across the hall. Leave your notes in
11 your chairs, please. You may leave the courtroom. The jurors
12 may leave.

13 Everybody else just remain in the courtroom until
14 they have cleared the hallway, please.

15 (The jury departed the courtroom at 12:27 p.m.)

16 **THE COURT:** You may be seated. All the jurors have
17 left the courtroom.

18 Anybody have any issue that you want to bring to my
19 attention?

20 **MR. GREEN:** Not from the Government?

21 **MR. BRYSON:** No, Your Honor.

22 **THE COURT:** Okay. All right. If you could be back
23 and ready to go at 1:45. If they are ready, we'll start. We
24 lost a little time with the extended break this morning.

25 Is that enough time for everyone?

1 **MR. GREEN:** Yes, Your Honor.

2 **THE COURT:** If that's a problem in the future, let me
3 know.

4 So we'll be in recess until 1:45. I think I am
5 swearing in some probation officers at 1:00, if I'm not
6 mistaken, so there will be some activity in the courtroom in
7 the interim.

8 Enjoy your lunch. We'll see you at 1:45.

9 (Proceedings recessed at 12:28 p.m.)

10 (Proceedings called back to order at 1:48 p.m.)

11 (The Defendant was present.)

12 **THE COURT:** Are we ready to proceed?

13 **MR. PRINCIPE:** Yes, Your Honor.

14 **THE COURT:** Please bring the jury in.

15 (The jury returned to the courtroom.)

16 **THE COURT:** Please be seated.

17 Ladies and gentlemen of the jury, welcome back. I
18 hope you had a good lunch. I understand it's nice outside.

19 The Government may call its next witness.

20 **MR. PRINCIPE:** Thank you, Your Honor. The Government
21 calls Robert Turner.

22 **DETECTIVE ROBERT TURNER,** GOVERNMENT'S WITNESS, being first duly
23 affirmed, at 1:50 a.m. testified as follows:

24 **THE COURT:** You may remove your mask while you're
25 testifying, sir.

1 **THE WITNESS:** Thank you, sir.

2 **THE COURT:** Please proceed.

3 DIRECT EXAMINATION

4 **BY MR. PRINCIPE**

5 Q Would you please state your name.

6 A My name is Robert Turner.

7 Q Who do you work for?

8 A Durham Police Department.

9 Q What's your current position?

10 A My current position is a detective within our Homicide
11 Division.

12 Q And how long have you worked for the Durham Police
13 Department?

14 A Roughly seven and a half years.

15 Q What was your role in April of 2018?

16 A I was a patrol officer assigned to District 4.

17 Q Can you explain what the general responsibilities of a
18 patrol officer are?

19 A Yeah. Patrol, we are basically the primary source for 911
20 calls, calls for service. That's got a wide range of
21 responsibilities: Larcenies, robberies, general calls for
22 service, harassment, shootings, things like that.

23 Q And you were working on April 15, 2018?

24 A I was.

25 Q What shift were you working?

1 A That would be our night shift, which would encompass the
2 hours of 6:00 p.m. to 6:00 a.m.

3 Q And what was the area of Durham that you were responsible
4 for?

5 A My specific area would be the Southside neighborhood of
6 Durham, which is Southeast Durham, but District 4 encompasses
7 most of South, Southeast Durham. It's a pretty large district.

8 Q And did you eventually get a call for service and respond
9 to Carlton Crossing Drive?

10 A I did.

11 Q And can you explain when you got that call?

12 A I don't know the exact time. It was nighttime. It came
13 out as a gunshot wound call that I responded to. It was out
14 of -- it was an out-of-district call.

15 Q And so how far away were you from that location at the
16 time you got the call?

17 A I don't want to speculate distance, but I -- looking at
18 the map that we can see everyone's location on the map, I was
19 the closest unit. A few miles maybe.

20 Q Okay. And what did you do when you got that call for
21 service?

22 A I responded.

23 Q And approximately how long did it take you to get there?

24 A Less than ten minutes, I believe.

25 Q Okay. And can you describe what you saw when you arrived

1 at Carlton Crossing Drive?

2 A Yes. As I arrived on scene, there was a small crowd in
3 the middle of the street flagging me down when they heard the
4 lights and sirens. I noticed that there was a minivan that was
5 blocking my -- blocking the road so no one can get around it.
6 It was almost in the middle of the street, facing the driveway
7 and the house.

8 Q And what was the weather like at that time?

9 A It was a rather heavy downpour.

10 Q And was your -- were you in a patrol car?

11 A I was.

12 Q Was it marked?

13 A Marked car, yes, sir.

14 Q Can you just describe it briefly for the jury?

15 A Durham Police Department uses mostly white cars with black
16 trim with a large "POLICE" on each side and the rear, and then
17 we have an overhead light bar.

18 Q And was that vehicle equipped with a dash camera?

19 A It was.

20 Q Was it activated when you responded to Carlton Crossing
21 Drive?

22 A It was.

23 Q Did you also have a body camera that day?

24 A I did.

25 Q And where did you have the body camera affixed?

1 A When I was on patrol, I would wear it on my chest.

2 Q And at some point did you also activate your body camera
3 during the response to Carlton Crossing Drive?

4 A I did.

5 Q And have you had an opportunity to review both of those
6 footage before the trial today?

7 A I have.

8 **MR. PRINCIPE:** May I approach, Your Honor?

9 **THE COURT:** Yes.

10 **BY MR. PRINCIPE**

11 Q I'm showing you a disk marked Government's Exhibit 10.

12 Did you have an opportunity to look at the contents of
13 that disk?

14 A I did.

15 Q Does it have two files -- two video files on it?

16 A Yes.

17 Q Is that your dash camera and your body camera from
18 April 15, 2018?

19 A It is.

20 Q Has it been modified or altered in any way?

21 A No.

22 **MR. PRINCIPE:** Your Honor, we move it into evidence
23 as Government's Exhibit 10.

24 **THE COURT:** Admitted.

25 **MR. PRINCIPE:** Permission to publish the dash camera

1 footage, Your Honor?

2 **THE COURT:** You may.

3 (Government's Exhibit No. 10 was played.)

4 **BY MR. PRINCIPE**

5 Q Were you able to see the time and date on your dash
6 camera?

7 A I am. I can see it, yes.

8 Q And is that typically calibrated to the correct time?

9 A It is.

10 Q What time was it at the time you first started to respond
11 to the call?

12 A 10:27 and 3 seconds p.m.

13 **MR. PRINCIPE:** Continue playing.

14 (Government's Exhibit No. 10 was played.)

15 **BY MR. PRINCIPE**

16 Q Pausing it right here at 4 minutes and 55 seconds, do you
17 recognize what street you just turned onto?

18 A I do.

19 Q What street was that?

20 A That would be South Roxboro street -- or South Roxboro
21 Road on that part.

22 Q Okay.

23 **MR. PRINCIPE:** Keep playing.

24 (Government's Exhibit No. 10 was played.)

25 **MR. PRINCIPE:** Pause it.

1 **BY MR. PRINCIPE**

2 Q And at 5 minutes and 42 seconds, we're stopping it.

3 What street did you just turn on there?

4 A I wouldn't know without looking at a map that street.

5 **MR. PRINCIPE:** Keep playing.

6 (Government's Exhibit No. 10 was played.)

7 **BY MR. PRINCIPE**

8 Q Now, was that the moment that you arrived at Carlton

9 Crossing Drive?

10 A Yes, it was.

11 Q Okay. And you mentioned before there was a group of

12 people standing around the minivan?

13 A Yes.

14 Q Okay. And what was the first thing you did once you

15 arrived?

16 A I got out of my car, which I positioned my car where my

17 driver's door is right up to the van. I believe I began to

18 assess the victim at that time.

19 Q What did you see?

20 A There was someone on top of him performing CPR, and I

21 believe there was someone in the passenger side, but I'm not

22 exactly sure.

23 Q Did you give any instructions to the person who was

24 performing CPR?

25 A I did.

1 Q What did you tell them?

2 A I told them to continue what they were doing and that we
3 should try to get him on the ground to a solid surface.

4 Q Did you try to do that?

5 A We did.

6 Q And what happened?

7 A The door was jammed.

8 Q Which door?

9 A The driver's door.

10 Q Could you tell why?

11 A It appeared to have bullet holes in it.

12 Q Did you notice any injuries on the man's body?

13 A I did.

14 Q What did you see?

15 A The gentleman had two wounds that I -- through my training
16 and experience would be gunshots to his left side of his face.

17 Q At some point did Durham County EMS arrive?

18 A They did.

19 Q How soon after you arrived did they get there?

20 A Maybe a few minutes.

21 Q Do you know if there was a time of death that was
22 announced by EMS?

23 A I never got that.

24 Q At some point did you began to secure the crime scene?

25 A I did.

1 Q At what point did you begin to do that?

2 A As EMS arrived, I believe, within a few minutes, I started
3 directing additional units that were arriving where to go and
4 where to set up crime scene tape.

5 Q Did you notice any shell casings anywhere?

6 A Initially, no.

7 Q At some point did you?

8 A Yes.

9 Q And what did you do when you saw that?

10 A I marked them with orange cones.

11 Q Okay. Did you notice any other damage to any property?

12 A Later on after the scene was secure, inside of the
13 house -- we had officers stand by inside and outside the
14 house -- I noticed defects in the floor, I believe, damage to
15 the floor and maybe wall of the inside of the house.

16 Q I'm now going to show you on your monitor Government's
17 Exhibit 11.

18 And do you recognize that to be a still image from the
19 dash camera we just watched?

20 A Yes.

21 Q And that's exactly where the van was positioned when you
22 got there?

23 A Yes.

24 Q Does it fairly and accurately depict that?

25 A Yes.

1 **MR. PRINCIPE:** Your Honor, the Government would move
2 Government's Exhibit 11 into evidence.

3 **THE COURT:** Admitted.

4 **MR. PRINCIPE:** And permission to publish it to the
5 jury?

6 **THE COURT:** You may.

7 **MR. PRINCIPE:** Your Honor, now permission to publish
8 his body-worn camera footage, which is on Government's
9 Exhibit 10?

10 **THE COURT:** You may.

11 (Government's Exhibit No. 10 was played.)

12 **BY MR. PRINCIPE**

13 Q Right at that moment, stopping at 35 seconds, do you
14 recognize the people that were just in that footage?

15 A I do.

16 Q And who were they?

17 A That would be, I believe, fire personnel -- fire
18 department personnel and the supervisor on scene.

19 Q And who was the supervisor?

20 A Corporal McQueen.

21 Q Who was the first to arrive on scene, though?

22 A That would be fire.

23 Q Out of the officers from the police department, were you
24 the first to arrive on scene?

25 A Yes, I was the first police officer on scene.

1 Q How soon after did Officer McQueen arrive?

2 A Within a few seconds, maybe not even a minute.

3 Q And then he was in charge at that point?

4 A Correct.

5 **MR. PRINCIPE:** Continue playing.

6 (Government's Exhibit No. 10 was played.)

7 **BY MR. PRINCIPE**

8 Q I'm stopping it at 5 minutes and 28 seconds.

9 At that point was EMS still working on Mr. Zheng in the
10 minivan?

11 A No.

12 Q And do you know why?

13 A He was pronounced deceased prior to that?

14 Q And you're seen placing down orange cones; is that right?

15 A Correct.

16 Q Is that a standard procedure for marking evidence?

17 A It is.

18 Q And what happens after that with those items that have
19 been marked that way?

20 A They will be collected as Forensics processes it with
21 their own equipment.

22 Q And whose responsibility is it to do that?

23 A Forensics.

24 Q So not patrol officers?

25 A Correct. Forensics will pick up -- we'll help Forensics,

1 but Forensics will tell us what needs to be picked up, and they
2 will place their markers down.

3 Q Okay. So while you're there initially setting up the
4 crime scene, you're marking items that might be significant for
5 crime scene investigators?

6 A Correct.

7 Q There was mention of a gun inside the minivan.

8 Did you ever see a gun inside the minivan?

9 A No. That was what was told to me.

10 Q Okay. And who told that to you?

11 A I believe it was a neighbor that was on scene.

12 Q Okay. When you arrived, at any point did you see family
13 or non-law enforcement inside the van?

14 A Yes.

15 **MR. PRINCIPE:** No further questions, Your Honor.

16 **THE COURT:** Any cross?

17 **MR. FOSTER:** Thank you, Your Honor.

18 CROSS-EXAMINATION

19 **BY MR. FOSTER**

20 Q Good afternoon, Officer Turner.

21 A Good afternoon.

22 Q So you were the first police officer on the scene;
23 correct?

24 A I was.

25 Q And were there any fire or EMS people there before you, or

1 were you the first of all those responders?

2 A First emergency personnel, correct.

3 Q Okay. And so in the video we saw, as you pull up, there's
4 two gentlemen out in the street. One is kind of flagging you
5 down.

6 So they were civilians or neighbors?

7 A I believe so at that time, yes.

8 Q Okay. And then when you first pulled up, was this
9 person -- I think a woman was in the car on top of Mr. Zheng
10 giving him CPR?

11 A Correct.

12 Q Okay. And do you know who she was?

13 A At that time, no.

14 Q At this time do you know who it was?

15 A No.

16 Q Okay. So the area that was eventually going to be staked
17 out by you or secured as a crime scene, all three of these
18 people were inside that area when you arrived; correct?

19 A There were people in and around the car, yes.

20 Q So when your body-worn camera was activated, unless it was
21 turned off -- turned on midway through it -- it appeared when
22 it first came on Corporal McQueen was already there. You could
23 see his back that said "POLICE." Is that correct?

24 A Yes, sir.

25 Q Okay. And so what was it that caused you to turn on your

1 body-worn camera at that point?

2 A When I had first arrived on scene, I was more concerned
3 about patient care and securing the crime scene. That's
4 probably why I forgot to turn it on initially.

5 Q So for what period of time was it that the civilians, the
6 woman in the car and the two men, were -- how long did it take
7 before you secured the crime scene and got everybody outside
8 that perimeter?

9 A Initially, I told who was doing CPR and the gentleman to
10 keep going because I didn't have any access to the victim. I
11 don't want to speculate, but it would be a few minutes -- not
12 more than a few minutes before EMS came and got everybody out
13 of the car.

14 Q In the areas where the shell casings eventually were found
15 included areas where these two neighbors or civilians were
16 standing when you pulled up; correct?

17 A Roughly, yes.

18 **MR. FOSTER:** I have no further questions.

19 **THE COURT:** Any redirect?

20 **MR. PRINCIPE:** Yes, Your Honor.

21 REDIRECT EXAMINATION

22 **BY MR. PRINCIPE**

23 Q Officer Turner, your dash camera that we played, that was
24 just a portion of the dash camera footage; correct?

25 A Yes.

1 Q And that video kept recording for a long time, didn't it?

2 A Yes.

3 Q And there was no break in that footage, was there, when
4 you reviewed it?

5 A No.

6 Q And then your body-worn camera, when you turned that on,
7 you were actually at another patrol vehicle; is that right?

8 A Yes.

9 Q And do you recall or know what you were doing at that
10 other vehicle?

11 A I believe I was either getting cones or the supervisor,
12 Corporal McQueen, may have asked me to grab the AD at that
13 time. I'm not exactly sure.

14 Q But the patrol vehicle you were standing near when your
15 body-worn camera footage began was not your patrol vehicle;
16 correct?

17 A Correct.

18 Q Your vehicle was the one that was in the front closest to
19 the minivan?

20 A Yes.

21 Q And that dash camera was playing the whole time?

22 A Yes.

23 **MR. PRINCIPE:** No further questions, Your Honor.

24 **THE COURT:** Anything further?

25 **MR. FOSTER:** No, Your Honor.

1 **THE COURT:** Thank you. You may step down, sir.

2 **MR. PRINCIPE:** Your Honor, may this witness be
3 released?

4 **THE COURT:** Any objection?

5 **MR. FOSTER:** No objection.

6 **THE COURT:** He may be released.

7 (At 2:18 p.m., witness excused.)

8 **THE COURT:** You can call your next witness.

9 **MR. PRINCIPE:** Yes, Your Honor. The next witness is
10 Rex McQueen.

11 **CORPORAL REX MCQUEEN**, GOVERNMENT'S WITNESS, being first duly
12 affirmed, at 2:18 p.m. testified as follows:

13 **THE COURT:** You may remove your mask, if you would,
14 please, while you're testifying.

15 Please proceed.

16 DIRECT EXAMINATION

17 **BY MR. PRINCIPE**

18 Q Would you state your name.

19 A Corporal Rex McQueen.

20 Q And what is your occupation?

21 A Police Corporal, Durham Police Department.

22 Q How long have you worked for the Durham Police Department?

23 A Since 2006, so 15 years.

24 **THE COURT:** Would you turn the mic towards you just a
25 little bit. Thank you, sir.

1 **THE WITNESS:** Do you need me to repeat that?

2 **BY MR. PRINCIPE**

3 Q Sure. Why don't you.

4 A Fifteen years.

5 Q And what was your position in April of 2018?

6 A I was in the same position as a police corporal. At the
7 time I was District 3 supervisor.

8 Q And were you working on patrol at the time?

9 A I was.

10 Q And as a corporal, does that mean you were supervising
11 other people on patrol?

12 A Yes. I was the patrol supervisor for that shift.

13 Q And can you describe -- were you working on April 15,
14 2018?

15 A I was.

16 Q What shift were you working?

17 A Night shift.

18 Q And what area of Durham did your district cover?

19 A District 3, which is the southwestern section of the city.
20 It spans between about roughly the county line, Orange County,
21 to the west, the Chatham County line to the south, I-85 to the
22 north, and to the east roughly where Duke University is.

23 Q Okay. Are you familiar with the Carlton Crossing
24 neighborhood?

25 A I am.

1 Q And have you been to that location before prior to that
2 night?

3 A Yes, I have been to that -- not that specific location,
4 but that street.

5 Q Do you recall where you were when you first got the call
6 for service that brought you to Carlton Crossing Drive on
7 April 15, 2018?

8 A Yes. I was in the parking lot at Police Substation No. 3.

9 Q Okay. And how far away is that from Carlton Crossing
10 Drive?

11 A I'm not sure on actual mileage. My guess would be
12 approximately six or seven miles.

13 Q Okay. How long did it take you to get there?

14 A About seven minutes.

15 Q What was the nature of the call for service when it was
16 communicated to you?

17 A Originally the call for service was a panic alarm.

18 Q Okay. Did that change as you were responding to that
19 location?

20 A Yes, it did.

21 Q What information were you provided?

22 A When I was en route to it, the call upgraded to a gunshot
23 wound.

24 Q Do you know who the first officer to arrive at the scene
25 was?

1 A That was Officer Turner.

2 Q Was he on your squad or somebody you were supervising?

3 A No. He was the next district over. That specific area is
4 very close to District 4, so it borders the district. He was
5 on patrol in District 4, but the geographic area is technically
6 District 3.

7 Q And when you arrived at Carlton Crossing Drive, how many
8 other officers were on scene when you got there?

9 A At that time it was just Turner, and I believe he had a --
10 he may or may not have had a trainee with him.

11 Q Okay. And was EMS on scene at that point when you
12 arrived?

13 A No, not quite yet.

14 Q Do you know what time it was when you arrived?

15 A I want to -- do you mind if I check my notes?

16 Q Would it be in your notes?

17 A Yes.

18 **MR. PRINCIPE:** May I approach the witness, Your
19 Honor?

20 **THE COURT:** Yes, that's fine.

21 **BY MR. PRINCIPE**

22 Q Do you recall what time it was?

23 A I arrived at approximately seven minutes after dispatched.
24 I was dispatched 2222 hours, so 10:22 p.m. And I arrived
25 approximately seven minutes later, so it would be 2229.

1 Q And what was the weather like at that point?

2 A Pretty heavy downpour, heavy winds, quite a bit of rain,
3 very low visibility, and very hazardous road conditions while
4 driving there.

5 Q What did you see when you arrived at Carlton Crossing
6 Drive?

7 A When I arrived, I saw several individuals -- I saw Officer
8 Turner near a gray minivan, several individuals outside of a
9 minivan. It appeared to be, just from initial looks, what I
10 would characterize as a middle-aged Asian female, what appeared
11 to be two teenage Asian males, and an individual, a middle-aged
12 white female, performing CPR on the victim inside the vehicle.

13 Q What did you do?

14 A At that time I coordinated with EMS to get there and told
15 them to roll in. With the amount of people who were around it
16 and what was going on, I -- at one point we had to physically
17 tell everyone to leave the area and almost pull everybody off
18 so EMS can actually get in and begin working on the victim.

19 Q So you were trying to get control of the crime scene?

20 A Yes.

21 Q And trying to help Mr. Zheng?

22 A Yes.

23 Q At some point did you transition into trying to establish
24 a perimeter for a crime scene?

25 A Yes. After -- obviously our first priority is the life of

1 the victim or doing lifesaving measures. As soon as that is
2 done, there's going to be evidence with the victim in the
3 vehicle, all around the area to an extent that we don't
4 initially know how much evidence there is. So at that point,
5 once you can kind of ensure that EMS can get in there and
6 perform lifesaving measures, then we start trying to preserve
7 the crime scene; at which time, I would tell certain officers
8 to put out crime scene tape; if they spot something such as
9 shell casings, anything else, blood spatter, to preserve that
10 or watch it; if there is a firearm or something on the scene,
11 to watch that.

12 Q And did you actually engage in that process in this case?

13 A Yes, I did.

14 Q And what were some of the things that you observed or
15 tried to mark as possible evidence?

16 A We spotted some shell casings. We tend to mark those
17 where they are laying at. We didn't go in the vehicle much. I
18 was notified there was a firearm in the vehicle via radio; but
19 at that point, since we had secured the area and gotten people
20 away from the vehicle while EMS is working on the victim, we
21 set to leave everything in the vehicle -- once the -- we
22 decided -- I'm sorry. I believe I said we decided to leave or
23 not search the vehicle anymore to not disturb the scene any
24 further, expanded the crime scene. I told several officers to
25 take crime scene tape, expand it up the road and around on the

1 northern side of the road; another officer to go down and block
2 the southern end of the road and to be putting out crime scene
3 tape there.

4 We also discovered that the house -- the inside of the
5 house, or the house in general, may be involved in it. So we
6 expanded to go around the house to further preserve that.

7 Q Okay. With regard to the driveway, the walkway, and the
8 porch, was anything -- did you observe anything -- items of
9 potential evidence in those areas?

10 A Again, shell casings. There was a random shoe sitting
11 there, which we assumed was part of that. I was notified that
12 there was a firearm near the internal vestibule area. I did
13 not personally see it, but, of course, once we find something
14 like that, specifically, if it's a firearm, we'll have an
15 officer stand by with that. We, in this case, could keep it
16 where it was at and not take it and secure it.

17 Q Was anything done to -- where did the family members
18 eventually go once they were moved away from the minivan?

19 A Once we got them moved away from the minivan, since they
20 are all witnesses, we attempted -- and it was powering rain --
21 we attempted to get them up towards the house, toward the
22 garage -- back towards the house to keep them there while we
23 are searching for evidence to make sure that the entire -- any
24 evidence isn't contaminated.

25 Q At that point you thought that some portions of inside the

1 house might have been part of the crime scene?

2 A Yes.

3 Q So was there a particular area of the home that the family
4 members were moved to?

5 A Primarily toward the garage area where the officers via
6 radio told me that -- when he told me about the firearm being
7 seen, he explained it was closer -- like initial vestibule or
8 mudroom area. We figured the best place to put them would be
9 toward the garage.

10 Q Okay. And approximately how long would you say it took
11 from the time that you arrived to the time that you felt you
12 had established a relatively secure crime scene perimeter?

13 A It took a little longer initially. You can kind of see
14 where the crime scene is. However, it's a rather large crime
15 scene. So as we started to think we had it all together, we
16 would find additional shell casings and additional things. So
17 we expanded it and expanded it, I would say, approximately ten
18 minutes in total time from my arrival until the crime scene is
19 secured.

20 **MR. PRINCIPE:** No further questions, Your Honor.

21 **THE COURT:** Any cross?

22 CROSS-EXAMINATION

23 **BY MR. FOSTER**

24 Q Good afternoon, Corporal McQueen.

25 Can you hear me?

- 1 A Yes, sir.
- 2 Q So you responded, which means you began your travel to
- 3 this crime scene, at 2220; correct?
- 4 A Yes.
- 5 Q Which is 10:22 p.m.?
- 6 A That's correct.
- 7 Q So seven minutes later is roughly when you arrived?
- 8 A That's correct.
- 9 Q So that makes it 10:29 p.m.?
- 10 A That's correct.
- 11 Q Okay. And when you arrived, Officer Turner was the only
- 12 other law enforcement or emergency person there?
- 13 A The only one I saw. He may have had a trainee with him
- 14 that I didn't see.
- 15 Q I mean, do you remember that he did have a trainee?
- 16 A I'm not sure.
- 17 Q Did you have a dash camera in your vehicle that night?
- 18 A I did.
- 19 Q You did?
- 20 A Yes.
- 21 Q Okay. Was it running?
- 22 A It was.
- 23 Q How about a body-worn camera?
- 24 A Yes, I did.
- 25 Q Was that running?

1 A Yes, it was.

2 Q Did that capture what happened that night?

3 A Yes.

4 Q And so when you arrived, as your report indicates, there
5 were basically six individuals around the minivan?

6 A Correct.

7 Q Okay. And so your goal was to try to move them away so
8 that the crime scene could be secured?

9 A While our first goal is to attempt to -- if there is an
10 injured person in this case, our first goal is to perform
11 lifesaving measures, either ourselves or, if EMS is very close,
12 to get them in there. Obviously you want to preserve as much
13 evidence as possible, but the first thing you do is try to
14 preserve life.

15 Q So there is actually somebody in the car already giving
16 CPR to the victim; correct?

17 A Correct.

18 Q And do you know who that was?

19 A I believe it was the neighbor, but I'm not 100 percent who
20 it was. I can just describe her.

21 Q So she was inside the car, which was part of the crime
22 scene; right?

23 A Yes.

24 Q And you also had been notified that there was apparently a
25 gun in that vehicle?

1 A Yes, I was told that there was a firearm inside.

2 Q But I think I heard you say that you did not search the
3 vehicle?

4 A No, I did -- I visually looked inside, but we didn't want
5 to go inside and contaminate it.

6 **MR. FOSTER:** No further questions.

7 **THE COURT:** Any redirect?

8 **MR. PRINCIPE:** No, Your Honor.

9 **THE COURT:** Thank you. You may step down, sir.

10 **MR. PRINCIPE:** May the witness be released, Your
11 Honor?

12 **THE COURT:** Any objection?

13 **MR. BRYSON:** No.

14 **THE COURT:** You may be released.

15 (At 2:32 p.m., witness excused.)

16 **THE COURT:** You may call your next witness.

17 **MR. GREEN:** The Government calls David Laxton.

18 **DAVID LAXTON,** GOVERNMENT'S WITNESS, being first duly affirmed,
19 at 2:32 p.m. testified as follows:

20 **THE COURT:** Please remove your mask just for your
21 testimony.

22 Thank you.

23 DIRECT EXAMINATION

24 **BY MR. GREEN**

25 Q Would you tell the jurors your full name.

1 A David Laxton.

2 Q And, Mr. Laxton, where do you live?

3 A 4620 Carlton Crossing Drive, Durham.

4 Q And I'll ask if you knew Hong Zheng?

5 A Yes. He was our neighbor across the street.

6 Q And when you say "across the street," is that directly
7 across the street or at an angle?

8 A No, over and then diagonal to the left.

9 Q I'm going to show you Government's Exhibit No. 12.
10 Can you see it on your screen?

11 A Yes.

12 Q Do you recognize that as your street?

13 A Yes, it is.

14 Q And do you see 4617 Carlton Crossing Drive?

15 A I do.

16 Q And is that -- are you familiar with that address?

17 Is that your neighbor's address?

18 A Yes, it is. I'm sorry. I was just getting familiar with
19 the angle of the photograph.

20 Q Sure.

21 Using Government's Exhibit 12 --

22 **MR. GREEN:** I'm going to approach, Your Honor.

23 **THE COURT:** Yes.

24 **BY MR. GREEN**

25 Q Would you put an X where your house is, using the pen?

1 A Let's -- (indicating) this is my house.

2 Q Thank you.

3 **MR. GREEN:** Your Honor, I move to introduce
4 Government's Exhibit 12.

5 **THE COURT:** Does that include the hard copy version?

6 **MR. GREEN:** Yes, Your Honor.

7 **THE COURT:** All right. Admitted.

8 **MR. GREEN:** Thank you.

9 **BY MR. GREEN**

10 Q Directing your attention to April 15, 2018, were you home
11 that evening?

12 A Yes, I was.

13 Q And where were you?

14 A Upstairs bedroom, getting ready for bed.

15 Q Approximately what time was this?

16 A I think it was around 10:15, give or take a few minutes.

17 Q And was there anything that -- are you on the second floor
18 at that time of your residence?

19 A Correct. Yes.

20 Q Was there anything that caught your attention on that
21 evening?

22 A It was raining that -- it had been raining. I can't
23 remember if it was raining. But as I was getting ready to get
24 in the bed, starting having -- there was sounds of loud -- I
25 wasn't sure what it was at first. I wasn't sure if it was

1 fireworks, but then it became very clear very quickly that it
2 was not fireworks; it was some type of gunfire coming from
3 outside. I started to go to the window. I realized I did not
4 have my glasses on, and at that point in time, I got my
5 glasses. And as it continued, yelled for my family members to
6 stay down, get to the other side of the house, because I
7 realized probably what was going on.

8 Q And what did you surmise was going on?

9 A There had been some situations where our neighbors had
10 been robbed and/or kids held at gunpoint in the past. I was
11 familiar with that; and then when I realized that it was what
12 sounded like back-and-forth gunfire, I grabbed my pistol, went
13 downstairs. Also heard the sounds of tires kind of burning out
14 and a car. So I went -- I told them to dial 911. And by the
15 time I got out the door, cars were already gone, the gunfire
16 had stopped, and I went running over to the Zheng house.

17 Q When you heard the gunfire, did you have any idea how many
18 shots you heard fired?

19 A A lot. I would say anywhere from a dozen to a couple of
20 dozen, it sounded like. I mean, it was just -- it started off
21 a couple, but then it was rapid fire, like a clip was being
22 unloaded, if not more than one.

23 Q When you ran outside, what did you see?

24 A The door to their house was open. I could see the lights
25 on inside. I heard some yelling. I looked around to make sure

1 there was nobody out in the street or near me, went over up the
2 driveway. And when I got to the front door, I was yelling for
3 Jade to also see if she was okay, to see if everybody was okay.
4 She was in there. Eastern was in there. Mom was in there.
5 They were yelling. And then they said that the father was
6 still in the car, and I had run past him. So at that point in
7 time, I went back down to check on him.

8 Q And did you know Jade? Had she been in your home before?

9 A I don't think she had been in the home before, but I knew
10 the kids. My daughter is a friend of hers, and we talked to
11 the kids probably more than we talked to the parents because
12 they were working a lot.

13 Q When you went back down to the van, what did you see?

14 A The driver's side window had holes in it, couple of holes
15 in it, I think, from gunshot shots. There was a hole in the
16 driver's side door near where the lock or the handle were. I
17 saw him through the glass. The glass had not fallen out. It
18 was still kind of intact, kind of like shattered.

19 So I tried to get in to -- I couldn't get the door open,
20 the driver's side door open. I finally got in through the
21 driver's side rear door. It was a minivan. And inside there
22 was glass everywhere. I was trying to figure out if he had a
23 pulse. I was asking if he's okay. I believe the car might
24 have still been on. I'm not really sure. But it was angled
25 towards the -- kind of diagonal to the entrance of the

1 driveway, near where the mailbox was. And I was trying to get
2 a pulse. You know, noticed he had been shot.

3 And then mom got down there. I yelled for her to get
4 towels. I was also probably trying to dial 911 myself or
5 asking other people to dial 911 and yelling for neighbors to
6 help at that point in time.

7 Q And did your neighbors respond?

8 A Yes.

9 Q Who came outside? Do you recall?

10 A There was a lot going on. I know that neighbor Matt ended
11 up over there. Some neighbors from up the street came down at
12 one point in time. My next-door neighbors, George and Betty,
13 were out at one point in time as well. I ended up getting
14 through to the 911 dispatcher, I believe, encouraging them to
15 get an ambulance there as quickly as possible. Then also, you
16 know, I ended up calling, trying to get my wife out there to
17 help with CPR because she knows it better than I do.

18 Q What did you assess as far as how bad Mr. Zheng was
19 injured?

20 A I could not -- I could not tell if he -- if he had a pulse
21 or not, and there was not, that I could tell, an exit wound
22 from the gunshots that he received. There might have been some
23 motion, but it did not seem to be necessarily responsive to me
24 giving any verbal inputs, and just trying to get him to hold
25 up -- or to get him upright to be able to stop whatever blood

1 there was. I was just doing the best I could in the situation.

2 Q Did your wife come outside?

3 A Yes.

4 Q What did she do?

5 A She tried to give CPR and basically get -- we could not
6 get -- I guess one of the gunshots messed up the door. We
7 could never get the door unlocked, could not get the seat back
8 down to where he was in a position where I felt like -- like, I
9 couldn't do good chest compressions. I'm not the smallest of
10 people trying to wedge myself between his body and the steering
11 wheel. She got in. And, again, she's much more proficient at
12 that type of aid than I was. I was trying to make sure nothing
13 else happened.

14 And at one point in time, one of my neighbors, I guess,
15 was going to pick up his wife, and we saw headlights coming
16 towards us from a vehicle that was not making much noise. And
17 I ended up basically pulling my gun telling whoever it was --
18 at the time I didn't know it was my neighbor, but I didn't also
19 know if somebody was coming back to finish what they had
20 started. I probably used some strong terms, but basically had
21 that person turn around and go the other direction so that we
22 could -- they could keep doing what they were doing in the
23 vehicle, trying to help him.

24 But your original question I think was what was my
25 assessment of his condition. It was grave at that point in

1 time, if not beyond grave.

2 Q Did you speak to the 911 operator?

3 A I probably did. I have no idea. Kind of when I got
4 through, probably involved profanity, but also it was a
5 situation where I knew, based on some other stuff, that time
6 was of the essence if we were going to have a chance for him to
7 make it through in any way, shape, or form.

8 And there's not a -- the police substation is not far
9 away, but also at that point in time, it seemed like it was
10 taking a long time to hear any sirens or hear anything coming
11 towards where we were.

12 Q And describe the weather out there.

13 A It was -- the ground was wet. It started drizzling again.
14 I can't remember whether that was whenever I ran over or
15 whether it was after I was out of the vehicle and the police
16 had arrived. I think it started raining later on that evening,
17 but it was not -- it was not a clear evening in any shape or
18 form. It had rained earlier in the evening; and if I recall
19 correctly, it was raining while I was in the house after the
20 ambulance had gotten there, after the police had arrived.

21 Q Did you ever see a gun other than the one you were
22 carrying?

23 A I thought that I did, but I'm not sure. I know that I
24 helped encourage Eastern. He had one in the house and asked
25 him to give it to the police. I had given the police mine. I

1 told them that I had one on me. So they held mine until I was
2 released to go back to my property later on that evening.

3 But, you know, beyond the one that I had on my person --
4 and then whenever they said that they had one in the house, and
5 I'm, like, you need to give it to the cops, I wasn't sure what
6 state of mind Eastern was in. I also didn't want him to leave.
7 So I thought that I had seen one in the vehicle, but, again, it
8 wasn't there whenever I got back in the vehicle. So, again, I
9 may have just mistaken something in the dim light that there
10 was inside the car.

11 Q Did you stay with the family as the events of the evening
12 unfolded?

13 A I did. I was -- I realized that it wasn't a -- that -- I
14 was in the house because I felt like it would be -- it was,
15 one, helpful or might be helpful. I recognized a couple of
16 officers that had responded from past contact through some
17 stuff with sports leagues, things like that. And also given
18 that there had been a history of some incidents where the
19 family had either been robbed or attempted robbery, I was
20 trying to make sure that, to whatever degree, I could help.
21 But I was told I couldn't leave. It was an active crime scene.

22 And based on -- at one point in time, I think after the
23 ambulance had gotten there, I knew that he had passed I think
24 before the family realized that and were told that. So I was
25 also trying to help support the family to the degree possible

1 and work with the officers on scene to help them, to try to get
2 information, encourage the family to talk to them, tell them
3 whatever they knew.

4 **MR. GREEN:** Thank you. No further questions.

5 **THE COURT:** Any cross?

6 CROSS-EXAMINATION

7 **BY MR. BRYSON**

8 Q Mr. Laxton, I take it you were the first person to arrive
9 over there after the shooting stopped?

10 A Yes.

11 Q All right. And you walked up the driveway?

12 A I didn't walk. I was running.

13 Q Okay. You ran up the driveway?

14 A Yes.

15 Q And ran up the walkway?

16 A Yes.

17 Q And then you went up the stairs?

18 A I went up to the front door and stuck my head in, yelling
19 for the family to see if they were okay, to make sure everybody
20 was okay, calling for the children, I think, specifically.

21 Q You went all way the up and were standing on the front
22 porch?

23 A Yes.

24 Q And you did not enter the house?

25 A At that point in time, I was just in the doorway, I

1 believe. And then later, after the police arrived, yes, I was
2 in the house at that point in time.

3 Q Okay. But, initially, you stopped at the front porch?

4 A I think so, yes.

5 Q Then you went back down the stairs?

6 A There's steps. There's not stairs on their landing. I
7 went back down to where the van was, whenever they said that
8 dad was in the van, and that involves turning around, going
9 down, taking a right on the sidewalk and going down the
10 driveway to where the van was parked.

11 Q Okay. You basically kind of retraced your steps?

12 A Yes.

13 Q And then --

14 A I was barefoot. I wasn't going to go running through the
15 yard or anything like that.

16 Q Okay. That's when you went to the van?

17 A Yes.

18 Q And then while you were there trying to render aid, the
19 other neighbor Matt came up?

20 A At some point in time, yes.

21 Q And then you said there were two other neighbors that came
22 from down the street?

23 A There were several people that came out of their houses.
24 Again, it's a little bit fuzzy in my mind as to who arrived and
25 in what sequence. I remember Betty saying, "We need to pray."

1 She was trying to comfort Shirley. Some other neighbors came
2 down at one point in time, trying to help with traffic control
3 or just trying to get 911. A lot of people came out of the
4 houses, I think, that we -- I think the 911 center got
5 overloaded from our block at that point in time.

6 Q And they were all in and around the van?

7 A No. I think that they were staying away from it to the
8 degree possible because, while I was in there, it was just me.
9 And then after I got towels and I got help over there for
10 people that were better at -- I felt better qualified than me
11 to try to keep him alive and/or resuscitate him, I got out of
12 the van, and we kept everybody out -- away from the van while
13 they were trying to provide aid. That's why I pulled the gun
14 on my neighbor because I didn't know it was him at the time but
15 a car coming down street. We were making sure that we gave
16 every -- I felt like it was more important to try to save a
17 life at that point in time than let somebody drive by because
18 it was convenient.

19 Q But your wife at some point rendered CPR; correct?

20 A Yes.

21 Q And she would have been in the van at that time?

22 A Yes.

23 Q And your neighbor Matt, was -- he was near the van;
24 correct?

25 A I don't know if he got in the van. I don't know if he was

1 standing next to the van. I can't really remember exactly
2 where he was at that point in time.

3 Q Jade's mother was certainly near the van?

4 A She was near the van. I don't think I let her in the van.
5 I asked her to get towels, and she got towels.

6 Q Okay. So you believe you did speak with the 911 operator
7 at some point during this evening?

8 A Yes. I know I was trying to dial them frantically.

9 Q Okay. And you did express certain frustration at the
10 amount of time that it was taking for a police or ambulance
11 response; correct?

12 A I probably did. I mean, I think it's a natural human
13 reaction whenever you are dealing with somebody who has been
14 shot in the head that you don't -- if there's somebody that's
15 not on the way or you don't hear sirens coming and you know
16 that it's a dire situation, that you want it to -- you want all
17 possible assistance on the way as quickly as possible.

18 Q Okay. And I think you expressed that it took probably
19 about 15 minutes until people responded after the shooting?

20 A I have no idea how long it took them to get there. I was
21 not looking at my watch while all this was going on.

22 Q Okay.

23 A I mean, it could have taken that amount of time. I'm not
24 sure. I cannot recall.

25 **MR. BRYSON:** All right. Thank you very much.

2 **MR. GREEN:** Nothing further.

4 **MR. GREEN:** May the witness be released?

6 MR. BRYSON: No.

9 (At 2:52 p.m., witness excused.)

11 **MR. GREEN:** The Government calls Matt Hofmeier.

14 **THE COURT:** If you turn the mic towards your mouth a
15 little bit and remove your mask while you testify.

17 BY MR. GREEN

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19 A My name is Matthew Hofmeier.
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21 A I lived on 4702 Carlton Crossing Drive.

22 Q And, Mr. Hofmeier, what do you do for a living?

23 A I'm a pharmacist.

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1 Are you familiar with what that is?

2 A Yes, that was my home.

3 Q And you don't know when this photograph was taken, do you?

4 A Not precisely, but it would have been once I had that
5 vehicle in the driveway. So that would have been after 2017.

6 Q Does this photograph fairly and accurately depict the
7 exterior of your home as it would have appeared in April of
8 2018?

9 A Yes.

10 **MR. GREEN:** I am going to move introduction of
11 Government's Exhibit 13.

12 **THE COURT:** Admitted.

13 **MR. GREEN:** I ask that it be published?

14 **THE COURT:** You may.

15 **BY MR. GREEN**

16 Q Mr. Hofmeier, direct directing your attention to April 15,
17 with 2018, were you at the home that's depicted in Government's
18 Exhibit No. 13?

19 A Yes.

20 Q Who was present there?

21 A I was, my wife, and we had two small kids.

22 Q And I'll ask you to direct your attention to the evening
23 hours of April 15, 2018.

24 Do you recall what the weather was like?

25 A It was raining.

1 Q And was there something that drew your attention or
2 something that caught your attention around 10:20 in the
3 evening?

4 A My wife and I had just gone to bed and heard gunshots.

5 Q And describe exactly where you were.

6 A As relating to that picture?

7 Q Yes.

8 A We were on the first level. They are kind of behind the
9 small tree. There's two dormers. It was the level below that
10 and towards the back of the house.

11 Q And what happened -- what specifically did you hear?

12 A Several gunshots. My wife and I both sat up in bed and,
13 you know, said that wasn't lightning. I ran to the front of
14 the house, which was a closet in the master bedroom, and looked
15 out the window at that point.

16 Q And when you looked out the window, could you clearly see
17 the street?

18 A Yes.

19 Q And when you looked out the window, what did you see?

20 A There was a white SUV that was leaving pretty quickly, and
21 the back passenger side door was closing as it was driving
22 away.

23 Q And do you know where Hong Zheng lived?

24 A It was across the street and a couple of houses down.

25 Q And so was that white SUV you saw leaving away from that

1 area?

2 A Yeah, it was away from that.

3 Q Towards your home?

4 A Towards my home.

5 Q And what did you do when you saw the white SUV leaving?

6 A I pretty much immediately knew that something didn't seem
7 right about that, and so I went and got my cell phone and I
8 called 911.

9 Q Did you get through?

10 A Yeah.

11 Q I am going to play a portion of a call from Government's
12 Exhibit No. 11. I am going to ask if you recognize -- I'm
13 sorry -- Government's Exhibit 7. I'll ask if you recognize
14 your voice.

15 (Government's Exhibit No. 7 was played.)

16 **BY MR. GREEN**

17 Q Do you recognize your voice?

18 A Yes.

19 Q Is this the call you made?

20 A Yes.

21 **MR. GREEN:** Your Honor, I'm going to play the 911
22 call.

23 **THE COURT:** All right.

24 **MR. GREEN:** Go ahead.

25 (Government's Exhibit No. 7 was played.)

1 **BY MR. GREEN**

2 Q After you placed the 911 call, what did you do?

3 A I waited for a few moments to see if we heard anything
4 else. And then after a little bit, I kind of was poking my
5 head out my front door to see if I could see anything; and
6 about that time, I heard one of my neighbors yelling and wanted
7 to go help.

8 Q And do you recall which neighbor it was?

9 A It was Dave.

10 Q Is that Dave Laxton?

11 A Yes.

12 Q What did you do then?

13 A I went and got a flashlight from my bedroom and then went
14 out to the street.

15 Q What did you see when you got there?

16 A So I turned towards Dave's house because I wasn't sure
17 where the event had happened, so was walking that way. And as
18 I got to the street, I saw a van kind of half in and half out
19 of the driveway across the street, and I saw Dave's wife,
20 Dessie, was giving compressions.

21 Q What happened next?

22 A Dave came out, and he handed a phone off to me with a
23 dispatcher.

24 Q And did you tell the dispatcher what you saw?

25 A Yes.

1 Q What happened next?

2 A I stayed to be around with neighbors to help in any way I
3 could and wait for emergency services to arrive.

4 Q Did you get inside the van?

5 A No.

6 Q Did you see what was inside the van?

7 A I did.

8 Q What did you see?

9 A There was a man in the front seat of the driver side
10 that -- they had the seat back, and, like I said, Dessie was
11 giving compressions.

12 Q And when the police came, what happened? What did you do?

13 A At that point I think I may have spoken with an officer.
14 I don't exactly remember, but went back home to my family once
15 they arrived.

16 MR. GREEN: Thank you. That's all the questions I
17 have.

18 THE COURT: Any exam?

19 CROSS-EXAMINATION

20 BY MR. BRYSON

21 Q When you walked down to the van, you got close enough to
22 it that you could see inside the van?

23 A Yeah, close enough that I could see a bit.

24 Q Did you remain on the passenger side, or did you also go
25 over to the driver's side?

1 A I stayed on the passenger side.

2 Q And Mr. Laxton's wife was rendering CPR?

3 A Yes.

4 Q And Mr. Laxton was assisting her?

5 A I think at that time he was up at the house, and he came
6 down a moment later.

7 Q Were there other neighbors near the van?

8 A There -- I don't really remember anybody else near the
9 van. There were some others on the other side of the street.

10 Q Okay. And did any other neighbors come out and assist
11 while you were there?

12 A There were a few other people that were nearby, but I
13 honestly didn't know very many of the neighbors.

14 Q Could you tell where they were?

15 A They were kind of in front of Dave's house.

16 Q Okay.

17 **MR. BRYSON:** Those are my questions.

18 **MR. GREEN:** Nothing further.

19 **THE COURT:** You may step down, sir.

20 **MR. GREEN:** May the witness be released?

21 **MR. BRYSON:** No objection.

22 **THE COURT:** Yes. You're free to leave, sir.

23 (At 3:03 p.m., witness excused.)

24 **THE COURT:** You can call your next witness.

25 **MR. GREEN:** Evrardo Macias is the next witness.

1 as a photograph from the street of your house?

2 A Yes, that's my house.

3 Q And you don't know when this picture was taken; correct?

4 A Might have been the spring of 2019, I believe, when we
5 purchased that car.

6 Q So at some point after the events of 2018?

7 A Correct.

8 Q But does this photograph accurately reflect how your house
9 would have appeared in 2018? Is there any significant
10 differences?

11 A No, it's the same.

12 **MR. GREEN:** All right. I am going to move
13 introduction of Government's Exhibit 14.

14 **THE COURT:** Admitted.

15 **MR. GREEN:** And ask that it be published?

16 **THE COURT:** You may.

17 **BY MR. GREEN**

18 Q Were you home on the evening of April 15, 2018?

19 A Yes.

20 Q And directing your attention to somewhere approximately
21 10:20 in the evening, what were you doing?

22 A At that time I was home. I believe I was -- I can't
23 remember if -- right around that time I was going to pick up my
24 wife, so I don't remember the exact time, but I was home on a
25 Sunday night, and she was at work.

1 Q And was there something that got your attention that
2 evening?

3 A Yes. A lot of banging, what I initially thought was,
4 like, a transformer or something going out.

5 Q And how many did you hear?

6 A Probably like 15, 16 or so.

7 Q And what did you do when you heard those sounds?

8 A I ran to the front of my house to look out the front
9 window.

10 Q And did you?

11 A Yes.

12 Q Did you have a clear view of the street?

13 A Yes.

14 Q And describe for the members of the jury what you saw.

15 A As soon as I opened up the blinds to my front window, I
16 quickly saw -- as soon as I opened the windows, I saw a car
17 speeding by the front of my house.

18 Q Can you describe that car?

19 A It looked like a mid-sized SUV, maybe a newer model, light
20 color, maybe white, at the time.

21 Q And what did you do next after you saw that car speeding
22 by?

23 A So after that, I had to go pick up my wife. And so I went
24 and put my shoes on and got in my vehicle, and I backed out of
25 my driveway. I didn't put anything together at that time. I

1 turned to the right coming out of my house towards where the
2 altercation was happening. And when I was getting closer, one
3 of the neighbors was in the street with a pistol and told me
4 basically to back up or get out of the area, so I immediately
5 reversed.

6 Q Had you lived in the neighborhood very long?

7 A I think I was there maybe about three or four months at
8 the time. We moved in January 2018.

9 Q When you turned and went down towards that location, was
10 that the direction from where that light-colored vehicle had
11 come?

12 A He was speeding away from that direction, yes.

13 Q And, subsequently, did you have an opportunity to tell law
14 enforcement? Did they come by and ask to see if anybody had
15 seen anything, and you told them what happened?

16 A Yes. I believe it was at the next day.

17 **MR. GREEN:** Thank you.

18 That's all the questions I have.

19 **THE COURT:** Any questions?

20 **MR. BRYSON:** No questions.

21 **THE COURT:** All right. You may step down, sir. You
22 can put your mask back on.

23 Thank you.

24 **MR. GREEN:** May this witness be released?

25 **THE COURT:** Any objection?

1 **MR. BRYSON:** No objection.

2 **THE COURT:** You are free to leave. Thank you.

3 (At 3:09 p.m., witness excused.)

4 **THE COURT:** Do you want to call your next witness?

5 How long will your next witness be?

6 **MR. PRINCIPE:** She may take a little bit longer, Your
7 Honor. There will be some photographs.

8 **THE COURT:** We'll stop right here then because it's
9 been roughly an hour and a half.

10 Jurors, please put your notes in your envelopes.
11 We'll take our afternoon break. It's 3:10, so we're going to
12 be back in court no later than 3:30. When I dismiss you in a
13 minute, make sure you use the restroom and get relaxed and do
14 what you need to do. Then we'll try to start right back. I'm
15 trying to keep our breaks long enough so you can do what you
16 need to do, but not any longer than necessary so we just keep
17 moving along. So if that becomes a problem, just let me know.

18 Leave your notes in your chairs. Remember all my
19 admonitions to you, and we'll call you to be back at 3:30 then.

20 Everyone else please remain in the courtroom while
21 the jury leaves.

22 Ms. Engle will take you to the jury room.

23 (The jury departed the courtroom.)

24 **THE COURT:** Please be seated. Give them a moment to
25 clear out of the vestibule before we leave.

1 All right. The jury has left the courtroom. Any
2 matter you want to bring to my attention?

3 **MR. GREEN:** No, Your Honor.

4 **MR. BRYSON:** No, Your Honor.

5 **THE COURT:** Okay. We'll take a break for 20 minutes.
6 Please be ready. I would like to start right at 3:30, if we
7 can.

8 (Proceedings recessed at 3:11 p.m.)

9 (Proceedings called back to order at 3:32 p.m.)

10 (The Defendant was present.)

11 **THE COURT:** Ready to proceed?

12 **MR. PRINCIPE:** Yes, Your Honor.

13 **THE COURT:** Bring the jury in, please.

14 (The jury returned to the courtroom.)

15 **THE COURT:** All right. Please call your next
16 witness.

17 **MR. PRINCIPE:** Yes, Your Honor. The Government calls
18 Betty Scruggs.

19 **BETTY SCRUGGS,** GOVERNMENT'S WITNESS, being first duly affirmed,
20 at 3:34 p.m. testified as follows:

21 **THE COURT:** If you would remove your mask while
22 you're testifying.

23 Thank you.

24 DIRECT EXAMINATION

25

1 **BY MR. PRINCIPE**

2 Q Can you please state your name.

3 A Betty Scruggs.

4 Q And, Ms. Scruggs, where do you live?

5 A I live in Durham, North Carolina.

6 Q And what street do you live on?

7 A 4618 Carlton Crossing.

8 Q And how long have you lived at that address?

9 A Almost 11 years.

10 Q What is your current occupation?

11 A I'm a retired teacher.

12 Q And how long did you teach for?

13 A Off and on, probably about 25 years.

14 Q And how long have you been retired?

15 A Right at five years.

16 Q Okay. And I'd like to direct your testimony to the night
17 of April 15, 2018. Do you recall having to call 911 at some
18 point?

19 A I do.

20 Q Can you tell the jurors about that? Why did you call 911?

21 A Yes. Well, my husband and I had gone to church that
22 night, came back, watched a little TV. It was one of those
23 nights when the weather -- they -- a few warnings about storms
24 and so on, and so we decided we'd head on to bed. I think it
25 was around 11:00. I really -- I honestly can't tell you the

1 time.

2 But I was heading into the kitchen to get some water. And
3 as I was walking in, I started hearing a pop, pop, pop, pop,
4 pop. And I told my husband, I said, "Oh, my goodness." I
5 said, "It must be hailing outside." So I looked on our deck.
6 Nothing was happening. And where I was standing in my kitchen,
7 I had a straight shot through the dining room to the music room
8 area to the window that faces our front yard. I was seeing
9 lighting, just, like, shooting, and then I heard a breakage of
10 our glass in our window, didn't know which one at the time.
11 But then I told my husband, I said, "I'm calling 911," and I
12 told him, "Please call the neighbor; see if they know what's
13 going on," because we had no idea. All I could figure is
14 people just going wild driving up and down, shooting in windows
15 for all we knew.

16 Q Let me show you an exhibit. I am going to show you
17 Government's Exhibit No. 12.

18 And do you recognize that to be the street where you live?

19 A I do.

20 Q And are you able to -- are you able to identify your house
21 in relation to that kind of circular marker?

22 A Yes, the little marker. If you come straight across the
23 street to the house with the gray roof, that's our home.

24 Q Okay. The one with the light gray roof?

25 A Yes.

1 Q All right. And that's the house where the glass broke?

2 A Yes.

3 Q All right. And then I would like to play a portion of a
4 phone call to 911. This is Government's Exhibit 7.

5 (Government's Exhibit No. 7 was played.)

6 Do you recognize your voice in that call?

7 A Yes.

8 Q Is that the call you placed to 911 on April 15, 2018?

9 A Yes.

10 Q All right.

11 **MR. PRINCIPE:** We're going to play the call, Your
12 Honor.

13 **THE COURT:** Yes.

14 (Government's Exhibit No. 7 was played.)

15 **BY MR. PRINCIPE**

16 Q Mrs. Scruggs, did you eventually find out what did happen?

17 A Yes. I had told my husband, while I made the 911 call, I

18 said, "Call our neighbors to see if they have any idea what's

19 going on." When I got off the 911 call, he was talking with

20 our neighbor, Todd, which is on the left side of us, our

21 driveway side. And as I'm listening, then I said, "Todd," I

22 said, "it sounds like you're outside." He says, "Yeah, I'm

23 outside, but the shooters are gone." I said, "The shooters are

24 gone?" He said, "Yeah." He says, "But our neighbor has been

25 shot."

1 Q Okay. And at some -- yes, ma'am.

2 A That was how we knew. And then by then, we knew it was
3 okay to go outside, and so then we went outside and we saw.

4 Q And what did you see when you went outside? Or how close
5 did you get?

6 A Well, we went directly over there, but what we saw was the
7 van that Zheng was driving, and it was just at the foot of the
8 drive, and some folks had gathered around there. Shirley was
9 yelling for someone to help him, and we went over to try to
10 help Shirley. And by then, some police -- I don't really
11 remember who all had arrived, but the medical had not gotten
12 there yet. And our neighbor on the other side, Dessie, had
13 come, and Dessie got in and tried to give him resuscitation.
14 And I asked her the next day, I said, "Was Zheng alive?" And
15 she said, "No." But she says, "I just wanted Shirley to know
16 someone was trying." And that's -- and then we got Shirley to
17 go inside.

18 Q Did you -- you didn't ever go inside the minivan at all,
19 did you?

20 A No. I saw in, but that was enough. And I did not get in,
21 no. Dessie, as far as I know, did.

22 Q And then the following day, did law enforcement come to
23 your house?

24 A They did and came to see the damage they had done on the
25 window and some of the furniture and tried to find the bullet

1 or bullets. We didn't know --

2 Q Let me show you a series of photographs. I am going to
3 start by showing you Government's Exhibits 15, 16, 17, and 18.

4 Can you see Government's Exhibit 15 on your screen?

5 A Yes.

6 Q What is that a picture of?

7 A That's a picture of the front of our home.

8 Q And now Government's Exhibit 16?

9 A That's the front of our home, the front window that I
10 could see. All the way back from the kitchen, I could see
11 through it. Now, it did have sheers there, but you could see
12 through the sheers.

13 Q And Government's Exhibit 17, do you recognize what that's
14 a photograph of?

15 A Yes, I recognize that.

16 Q What is it?

17 A It is a bullet through -- that's what I heard and when I
18 knew someone was shooting real bullets.

19 Q Okay. And Government's Exhibit 18, what does that show?

20 A That shows the window and the drapery that it hit and the
21 tea table, which you can't see from this side, but it hit the
22 little tea table, too.

23 Q Is that the same hole in the window but from the inside?

24 A Yes.

25 Q Okay. And do all those photographs fairly and accurately

1 depict the things that they are?

2 A Yes.

3 **MR. PRINCIPE:** The Government would move Government's
4 Exhibits 15 through 18 into evidence, Your Honor. And
5 permission to publish?

6 **THE COURT:** Admitted. And you may.

7 **BY MR. PRINCIPE**

8 Q So this is the photograph you identified as the outside of
9 your home?

10 A Yes.

11 Q And then Government's Exhibit 16, that's the window that
12 was shot?

13 A Yes.

14 Q Government's Exhibit 17, that's the damage you saw in the
15 window?

16 A Yes.

17 Q And Government's Exhibit 18, that's the inside view of
18 that same window?

19 A Yes.

20 Q Okay. Now, I would like to show you another series of
21 photographs, Government's Exhibits 19, 20, 21, and 22.

22 Do you recognize what Government's Exhibit 19 is?

23 A Yes, that was side that the bullet hit first.

24 Q Government's Exhibit 20?

25 A Yes.

1 Q What is that?

2 A That's our little music room area.

3 Q Is that where the window was that --

4 A That's where the window -- yes. You see the little tea
5 table right against the window there, and then the bullet came
6 in and hit the piano.

7 Q And what is Government's Exhibit No. 21 a photograph of?

8 A That's the piano pedal where the bullet went through the
9 wood part.

10 Q And Government's Exhibit 22?

11 A That was the wall that the bullet undoubtedly bounced and
12 hit that.

13 Q So that damage was not there prior to the phone call that
14 you placed?

15 A No, that was not.

16 Q And do all of those exhibits, Government's 19 through 22,
17 fairly and accurately depict the damage that you saw at the
18 house the next day?

19 A Oh, yes.

20 **MR. PRINCIPE:** Your Honor, the Government would move
21 Government's Exhibits 19 through 22 into evidence and
22 permission to publish those.

23 **THE COURT:** Admitted. You may.

24 **BY MR. PRINCIPE**

25 Q So this is damage to the table near the window; is that

1 right?

2 A That's correct.

3 Q Okay. Government's Exhibit 20, that's the room where the
4 damage was?

5 A Yes, uh-huh, the table.

6 The piano.

7 Q And Government's Exhibits 21 is the piano pedal; is that
8 correct?

9 A That's correct.

10 Q All right. And, lastly, Government's Exhibit 22, that's
11 the damage to the wall?

12 A The wall.

13 Q Mrs. Scruggs, I'm going to show you one last series of
14 photos, Government's Exhibits 23 and 24.

15 Do you recognize Government's Exhibit 23?

16 A I do.

17 Q And what is that a photograph of?

18 A That is the bullet. I can't tell how long they looked for
19 that bullet because they were looking all over in the music
20 room area and had almost given up and getting ready to leave.
21 And they were standing there talking, and someone looked down,
22 and that's where it was.

23 Q And what's the piece of furniture that it's near?

24 A It's just an entry dresser.

25 Q Okay. And Government's Exhibit 24, do you recognize that?

1 A That's the bullet.

2 Q All right.

3 **MR. PRINCIPE:** Your Honor, the Government moves
4 Government's Exhibits 23 and 24 into evidence.

5 **THE COURT:** Admitted.

6 **MR. PRINCIPE:** And permission to publish those?

7 **THE COURT:** Yes, you may.

8 **BY MR. PRINCIPE**

9 Q And that's the furniture with the bullet underneath?

10 A Yes.

11 Q And then Government's Exhibit 24, that's a closeup of the
12 bullet they found?

13 A Yes.

14 **MR. PRINCIPE:** I have no additional questions, Your
15 Honor.

16 **THE COURT:** Any exam?

17 CROSS-EXAMINATION

18 **BY MR. BRYSON**

19 Q So while you were in the house, you were speaking with
20 your neighbor Todd on the telephone; correct?

21 A Correct.

22 Q And during that conversation, you realized he was outside?

23 A Yes.

24 Q And then you went outside?

25 A Right.

1 Q And when you got out there, did you see Todd out there?

2 A To tell you the truth, I don't know because, by then, a
3 number of neighbors had come out.

4 Q Okay. And you actually went over to the minivan; correct?

5 A To Shirley's house, yes -- or over to the scene, yes.

6 Q And you walked up the driveway?

7 A Yes.

8 Q All right. Did you walk up the walkway, too?

9 A Yes.

10 Q Did you walk up the front steps?

11 A The front steps.

12 Q Did you actually go in the house?

13 A Yes, I did.

14 Q Okay. And then, I take it, you came back and went back
15 the same way?

16 A Yes.

17 Q All right. And you did at some point stand close enough
18 to the minivan that you could see inside?

19 A To the van, yes, I could.

20 Q And was that on the passenger side or the driver side?

21 A I think it would have been more on the passenger side, as
22 I would probably have been heading back to my house and --
23 yeah.

24 Q I think you said that when you got out there, you saw a
25 group of folks gathered around; is that right?

1 A Yes, that's correct.

2 Q And were they gathered near the minivan?

3 A They were just scattered different places. I couldn't
4 tell how many were close and how many were away.

5 Q Some people were in the driveway?

6 A Yes.

7 Q And some people walked up the walkway?

8 A Right.

9 **MR. BRYSON:** Thank you. Those are my questions.

10 **THE COURT:** Anything on redirect?

11 **MR. PRINCIPE:** No, Your Honor.

12 **THE COURT:** Thank you, ma'am. You may step down.

13 You can put your mask back on.

14 **MR. PRINCIPE:** May Mrs. Scruggs be released, Your
15 Honor?

16 **MR. BRYSON:** No objection.

17 **THE COURT:** You are free to leave.

18 (At 3:50 p.m., witness excused.)

19 **MR. GREEN:** The Government calls Marcus Edwards.

20 **MARCUS A. EDWARDS, JR.,** GOVERNMENT'S WITNESS, being first duly
21 affirmed, at 3:50 p.m. testified as follows:

22 **THE COURT:** You can remove your mask, please, so we
23 can see and hear you while you testify.

24 DIRECT EXAMINATION

25

1 **BY MR. GREEN**

2 Q Good afternoon. Could you tell the jury your full name.

3 A Marcus Anthony Edwards, Jr.

4 Q And, Mr. Edwards, were you employed for a period of time
5 at Kroger, the grocery store?

6 A Yes, sir.

7 Q And were you employed in that capacity during April of
8 2018?

9 A I was.

10 Q And what were your duties?

11 A Loss prevention.

12 Q And what are some of the duties of loss prevention?

13 A Monitoring the external, which is the customers, as well
14 as the employees for any type of theft.

15 Q And do Kroger stores have video cameras in them and on the
16 exterior?

17 A Several, yes, sir.

18 Q And was it your job on occasion to review those videos to
19 see if they captured whatever you were looking for?

20 A Yes, sir.

21 Q And, in particular, did a Kroger on Roxboro Street in
22 Durham, North Carolina -- was it equipped with cameras in April
23 of 2018?

24 A Yes, sir.

25 Q Did you receive a request from the Durham Police

1 Department to pull certain surveillance cameras related to
2 dates that they gave you?

3 A That is correct, yes, sir.

4 Q I'm going to show you Government's Exhibit No. 25.

5 Can you see that on your monitor?

6 A I do.

7 Q And do you recognize that as an aerial photograph of the
8 area around what was then the Kroger store in April of 2018?

9 A It is, yes, the one on South Roxboro Street.

10 Q And had you been to that store before?

11 A Several times, yes.

12 Q In particular, do you recognize -- there is a pin -- there
13 is a China Wok restaurant. Do you recognize that restaurant?

14 A The China Wok restaurant, I do, yes, sir.

15 Q And with regard to this photograph, would that help
16 illustrate your testimony as to where the cameras were pointed
17 in terms of the surveillance video?

18 A Yes, sir.

19 **MR. GREEN:** Your Honor, I'll move introduction of
20 Government's Exhibit No. 25.

21 **THE COURT:** Admitted.

22 **MR. GREEN:** May I publish it?

23 **THE COURT:** Yes.

24 **BY MR. GREEN**

25 Q I am going to zoom in on one portion of that Government's

1 exhibit.

2 And you see -- are you familiar with those businesses that
3 were in that shopping center?

4 A I am.

5 Q And do you see a tobacco shop?

6 A I do.

7 Q And a Family Dollar further on?

8 A I do.

9 Q And the China Wok?

10 A Yes, sir.

11 Q Now, did the Kroger store on April 13 and April 15 have
12 cameras that pointed directly towards the area of the China Wok
13 from the Kroger?

14 A It did.

15 Q And so the Kroger would be in the most -- the top of this
16 picture that I'm seeing; is that correct?

17 A That is correct.

18 Q And so they would be pointed -- as Government's Exhibit
19 No. 25 is oriented, at least one photograph -- one camera would
20 depict the lot and the area towards the China Wok?

21 A Correct.

22 Q Thank you.

23 I'm going to show you what's been marked -- well, what is
24 Government's Exhibit No. 26.

25 **MR. GREEN:** May I approach?

1 **THE COURT:** Yes.

2 **BY MR. GREEN**

3 Q At the request of the Durham Police Department, did you go
4 into the Kroger video surveillance system and make copies of
5 the various camera angles?

6 A I did.

7 Q And how many different camera angles do you recall there
8 were, if you do?

9 A I know the one camera angle that I did was the outside's
10 camera -- parking lot camera that was facing towards the DMV,
11 tobacco shop, and the China Wok.

12 Q And did you also pull camera angles from exit walkways?

13 A Yes, sir.

14 Q And was that for a period of time between April 13 of
15 2015 [sic]?

16 A It was.

17 Q And did you make disks and give those to the Durham Police
18 Department?

19 A I did.

20 **MR. GREEN:** Your Honor, I will move introduction of
21 Government's Exhibit No. 26.

22 **THE COURT:** Admitted.

23 **BY MR. GREEN**

24 Q Now, the next -- from Government's Exhibit No. 26, I would
25 like to play a clip of a video for you and see if you recognize

1 that as video from the Kroger -- the exterior of the Kroger.

2 (Government's Exhibit No. 26 was played.)

3 We'll pause there. Do you recognize that scene?

4 A Yes, sir. That is the parking lot camera for the Kroger,
5 facing towards the DMV and the China Wok.

6 **MR. GREEN:** Your Honor, may we publish this portion?

7 **THE COURT:** Yes.

8 (Government's Exhibit No. 26 was played.)

9 **BY MR. GREEN**

10 Q Now, in the upper left-hand corner of that video, it
11 indicates a date/time group and timestamp.

12 Could you tell us what that information shows?

13 A It shows the date of April 15 of 2018 at the Kroger.

14 Q And what was the time group there in the right-hand side?

15 A 2204, which is 10:04.

16 Q And does that -- does that video fairly and accurately
17 describe and capture what was going on outside the Kroger on
18 that date and time?

19 A Yes.

20 **MR. GREEN:** Your Honor, I would like to play this
21 portion.

22 **THE COURT:** You may.

23 (Government's Exhibit No. 26 was played.)

24 **MR. GREEN:** If we could pause it.

25

1 **BY MR. GREEN**

2 Q In the upper left-hand corner, there appears to be a car
3 pulled up to a building.

4 Is that generally the area where the China Wok was that
5 you pointed out in the earlier exhibit?

6 A Correct.

7 **MR. GREEN:** Go ahead.

8 (Government's Exhibit No. 26 was played.)

9 **BY MR. GREEN**

10 Q I'm going to show you what's been marked as Government's
11 Exhibit Nos. 27 and 28.

12 Do you see that on your screen?

13 A I do.

14 Q Do you recognize that as the screenshot from the video we
15 just watched?

16 A Correct.

17 Q And would you give us the date and time -- the date and
18 timestamp?

19 A April 15, 2018, at 2205.

20 Q And looking at Government's Exhibit No. 28, I'll ask if
21 you recognize what that is?

22 A It's the parking lot camera, same angle, facing towards
23 the China Wok.

24 Q And what is the time and date?

25 A 4/15/2018 at 2205.

1 **MR. GREEN:** Your Honor, I'll move introduction of
2 Government's Exhibit Nos. 27 and 28, and ask they be published?

3 **THE COURT:** They are admitted. You may.

4 **MR. GREEN:** Now, if we could return to the clip,
5 fast-forward to where we were approximately.

6 **BY MR. GREEN**

7 Q In Government's Exhibit 26, were you also asked to provide
8 footage going back to two days prior, April 13 --

9 A Correct.

10 Q -- 2013 [sic]?

11 A Yes, sir.

12 Q I'm going to show you a portion of a video from
13 Government's Exhibit No. 26 and see if you recognize it.

14 Before I do that, if you'll pause it, looking at
15 Government's Exhibit-- looking at your screen, do you see
16 Government's Exhibit 29 on your screen?

17 A Yes, I do.

18 Q And do you recognize that as a screenshot from the video
19 of 4/15?

20 A Yes, sir.

21 Q And can you tell us what the date associated with that
22 video was?

23 A The one on 4/15?

24 Q Yes. What was the time?

25 A 2206.

1 **MR. GREEN:** And I'm going to move introduction of
2 Government's Exhibit 29, Your Honor, and ask it published?

3 **THE COURT:** Admitted. You may.

4 (Government's Exhibit No. 26 was played.)

5 **BY MR. GREEN**

6 Q Now, returning to the clip of two days earlier on
7 April 13 -- pause it -- do you recognize that as a clip from
8 the surveillance video of the Kroger?

9 A Correct.

10 Q And is that from the same camera angle and camera?

11 A Same camera.

12 Q And I'll ask if -- I'll ask on 4 -- the date/time -- I'm
13 sorry -- the timestamp on 4/13/28 --

14 A Yes, sir.

15 Q -- what is it?

16 A 2241.

17 Q Thank you.

18 **MR. GREEN:** If we can play it some more.

19 **THE COURT:** You said "28." Do you mean 2018?

20 **MR. GREEN:** I did.

21 (Government's Exhibit No. 26 was played.)

22 **BY MR. GREEN**

23 Q I'll show you Government's Exhibit No. 30 on your screen.
24 Do you recognize that as a still shot from the
25 surveillance video --

1 A Correct.

2 Q -- of the vehicle backing into the spot?

3 A Yes, sir.

4 Q And Government's Exhibit No. 30, can you tell us what the
5 timestamp on that is?

6 A 2241.

7 **MR. GREEN:** If we'll return to the clip, please.

8 (Government's Exhibit No. 26 was played.)

9 **BY MR. GREEN**

10 Q Can you tell us, now that that vehicle is pulled away,
11 what is the time?

12 A The time is 2251.

13 Q There appear to be individuals walking towards the
14 vehicle.

15 Are those individuals walking from the general direction
16 of the China Wok?

17 A Yes, sir.

18 (Government's Exhibit No. 26 was played.)

19 Q I'm going to show you Government's Exhibit No. 31.

20 Do you recognize that as a still photograph from -- a
21 still image from the video that we just watched?

22 A Correct.

23 Q Could you tell me the time group?

24 A The time is 2241.

25 **MR. GREEN:** Your Honor, I'll move introduction of

1 Government's Exhibit No. 31.

2 **THE COURT:** Admitted.

3 **MR. GREEN:** If I haven't previously moved admission
4 of Government 30, Your Honor, I would ask to do so.

5 **THE COURT:** Admitted.

6 **BY MR. GREEN**

7 Q Turning --

8 **MR. GREEN:** If you could -- if we could publish
9 Government's Exhibit No. 31.

10 **BY MR. GREEN**

11 Q I would like you to look now -- after looking at
12 Government's Exhibit No. 31, I would like you to look at
13 Government's Exhibit No. 28.

14 Based on your familiarity with that area, do those two
15 vehicles appear to be backing into the same spot?

16 A Correct.

17 **MR. GREEN:** That's all the questions I have.

18 **THE COURT:** Any cross?

19 CROSS-EXAMINATION

20 **BY MR. FOSTER**

21 Q So, Mr. Edwards, are you still with Kroger now?

22 A I'm not, no, sir.

23 Q So you've testified about being asked to provide -- first
24 review and then provide video surveillance from April 13 and
25 April 15; correct?

1 A Correct.

2 Q What about April 14? Were you asked to provide video
3 surveillance from the date?

4 A I believe so, yes, sir.

5 Q And was that -- did you provide that to the police?

6 A I do not recall. That was -- I haven't been there in
7 three years. I don't recall.

8 MR. FOSTER: I have no further questions.

9 THE COURT: Redirect?

10 MR. GREEN: No, Your Honor.

11 THE COURT: You may step down. You can put your mask
12 back on.

13 MR. GREEN: May the witness be released?

14 MR. FOSTER: No objection.

15 THE COURT: You are free to leave, sir.

16 (At 4:19 p.m., witness excused.)

17 THE COURT: All right. Call your next witness.

18 MR. PRINCIPE: Yes, Your Honor. The Government calls
19 Jeffrey Cleary.

20 OFFICER JEFFREY T. CLEARY, GOVERNMENT'S WITNESS, being first
21 duly affirmed, at 4:19 p.m. testified as follows:

22 THE COURT: If you would pull the microphone around
23 so it's directed toward your mouth and then remove your mask so
24 we can see and hear you while you testify.

25 Please proceed.

DIRECT EXAMINATION

BY MR. PRINCIPE

Q Would you state your name.

A Jeffrey Thomas Cleary.

Q Who do you currently work for?

A The Durham County Sheriff's Office.

Q How long have you been in law enforcement?

A Approximately five years.

Q Where were you working in April of 2018?

A The Durham Police Department.

Q And then you went directly from the Durham Police
Department to the sheriff's office?

A Yes, sir.

Q Do you remember responding to a call for service on
April 16, 2018?

A Yes.

Q Where did you respond to?

A 1315 Morreene Road, Apartment 21H.

Q And can you spell that?

A M-O-R-R-E-E-N-E, I believe.

Q And what is at that address?

A It's an apartment complex.

Q Is it Chapel Tower Apartments?

A Yes, sir.

Q And why did you respond to that location?

1 A I got a call for damage to property involving a vehicle.

2 Q Prior to getting there, did you know what kind of property
3 had been damaged?

4 A I don't remember the call notes, but I would assume it was
5 a white SUV.

6 Q Was there a name or a person you were supposed to meet in
7 relation to that call?

8 A I don't remember looking at the call notes prior. Only
9 when I got to the residence is what I remember.

10 Q And what time did you arrive at that location?

11 A I don't recall the time. It was in the morning. I just
12 remember the morning.

13 Q And what did you see when you got there?

14 A When I initially pulled in the parking lot, I noticed a
15 white Lincoln SUV. The driver -- the passenger door on the
16 driver's side, it had a bullet hole, and the window was busted
17 out on that same driver's door.

18 Q Okay. Did you speak to somebody after you noticed the
19 damage to the vehicle?

20 A Yes.

21 Q Do you know the name of that person?

22 A Miss House.

23 Q Do you know the first name?

24 A I can't -- Taquila House.

25 Q Okay. And did she give you some account of what happened

1 to the vehicle?

2 A Yes. She told me she went to a family member's house or
3 apartment complex the night prior, which was on Wiggins Street
4 in Braggtown, and she noticed -- she didn't notice the damage
5 that night because it was raining really hard. She said she
6 drove back to 1315 Morreene Road and noticed the damage in the
7 morning.

8 **MR. PRINCIPE:** May I approach the witness?

9 **THE COURT:** Yes.

10 **BY MR. PRINCIPE**

11 Q Did you have a body camera on April 16, 2018?

12 A Yes.

13 Q Was it activated when you responded to Chapel Tower
14 Apartments?

15 A Yes.

16 Q Did you have an opportunity to view that body-worn camera
17 footage before court?

18 A Yes.

19 Q Government's Exhibit 32 has the footage from your body
20 camera. And you said you had a chance to review that?

21 A Yes, sir.

22 Q And does it fairly and accurately depict what you saw or
23 what your camera captured when you looked at that damaged
24 vehicle at Chapel Tower Apartments?

25 A Yes.

1 **MR. PRINCIPE:** Your Honor, Government would move
2 Exhibit 32 into evidence.

3 **THE COURT:** Admitted.

4 **MR. PRINCIPE:** And permission to publish that video,
5 Your Honor?

6 **THE COURT:** You may.

7 (Government's Exhibit No. 32 was played.)

8 **BY MR. PRINCIPE**

9 Q Do you recognize that to be your body-worn camera footage
10 from April 16, 2018?

11 A Yes.

12 Q And what is the date and timestamp on that video?

13 A 4/16/2018 at 7:54 in the morning.

14 Q So that would be just before 8:00 a.m.?

15 A Yes, sir.

16 **MR. PRINCIPE:** Continue playing.

17 (Government's Exhibit No. 32 was played.)

18 **BY MR. PRINCIPE**

19 Q Now, can you explain -- what are you doing right at that
20 moment?

21 A I was writing down the vehicle information.

22 Q And prior to that, you were talking to somebody?

23 A Yeah, another squad mate of mine.

24 Q And what were you talking to him about?

25 A I believe there was a call on Morreene Road, another

1 incident that I believe maybe this car would be involved with.

2 Q At the time you believed that this car could have been
3 involved in that incident?

4 A Yes.

5 Q Okay.

6 **MR. PRINCIPE:** Can you continue playing?

7 (Government's Exhibit No. 32 was played.)

8 **BY MR. PRINCIPE**

9 Q And can you identify who the woman was at the end of that?

10 A Yes. That was Miss House.

11 Q I'm now going to show you Government's Exhibit 33.

12 Do you recognize that as a still image of the screen
13 capture from your body-worn camera?

14 A Yes, sir.

15 Q Does it fairly and accurately depict the license plate on
16 that footage?

17 A Yes, sir.

18 Q I'm showing you what's marked as Government's Exhibit 34.

19 Do you recognize that also as a screen capture, or still
20 image, from your body camera?

21 A Yes, sir.

22 Q Does it fairly and accurately depict the damage to the
23 door and window of that Lincoln?

24 A Yes, sir.

25 Q And showing you Government's Exhibit 35, does that image

1 fairly and accurately depict the hole that's in the door?

2 A Yes.

3 **MR. PRINCIPE:** Your Honor, the Government would move
4 Government's Exhibits 33, 34, and 35 into evidence.

5 **THE COURT:** Admitted.

6 **MR. PRINCIPE:** And permission to publish to the jury?

7 **THE COURT:** You may.

8 **BY MR. PRINCIPE**

9 Q Does that show the license plate?

10 A Yes, sir.

11 Q Next Government's Exhibit 34, does that show the damage to
12 the door and window?

13 A Yes, sir.

14 Q And now Government's Exhibit 35, does that show the hole
15 in the door?

16 A Yes, sir.

17 **MR. PRINCIPE:** No further questions, Your Honor.

18 **THE COURT:** All right. Any cross?

19 **MR. FOSTER:** No questions, Your Honor.

20 **THE COURT:** All right. You may step down, sir. You
21 can put your mask back on, please.

22 Is this witness to be released?

23 **MR. PRINCIPE:** Yes. May the witness be released?

24 **MR. FOSTER:** No objection.

25 **THE COURT:** You're free to leave.

1 (At 4:30 p.m., witness excused.)

2 **MR. PRINCIPE:** Your Honor, the next witness would be
3 Investigator Jeffrey Mitchell.

4 **DETECTIVE JEFFREY MITCHELL,** GOVERNMENT'S WITNESS, being first
5 duly affirmed, at 4:30 p.m. testified as follows:

6 **THE COURT:** If you can direct the microphone toward
7 your mouth and remove your mask so we can see and hear you.

8 Please proceed.

9 DIRECT EXAMINATION

10 **BY MR. PRINCIPE**

11 Q Would you state your name.

12 A Jeffrey Mitchell.

13 Q Who do you work for?

14 A Durham Police Department.

15 Q How long have you worked for the Durham Police Department?

16 A Fifteen years.

17 Q And how many total years in law enforcement do you have?

18 A Fifteen, sir.

19 Q And what is your current position?

20 A I'm a homicide detective.

21 Q And what was your position back in April of 2018?

22 A Homicide detective.

23 Q Do you also work with Detective David Cramer?

24 A I do.

25 Q And what's his role?

1 A He is a homicide detective as well.

2 Q Did you have some limited involvement in the investigation
3 of the attempted robbery of China Wok on April 15, 2018?

4 A Yes.

5 Q And did you go to Northgate Mall on April 19, 2018, as
6 part of that investigation?

7 A I did.

8 Q And why did you respond to that location?

9 A In reference to a Lincoln SUV.

10 Q Okay. And what did you go there to do?

11 A To help take pictures of it and seize it as part of the
12 investigation.

13 Q Did you go there with a crime scene investigator?

14 A Yes.

15 Q And who was that?

16 A Ms. Lindsey Kincaid.

17 Q Did she take photographs in your presence of the vehicle?

18 A She did, yes.

19 Q And did you have an opportunity to review those
20 photographs?

21 A Yes.

22 Q And where is that AVIS located?

23 A It's right by Northgate Mall on Guess Road.

24 Q Is the address 1720 Guess Road in Durham, North Carolina,
25 accurate?

1 A Yes, sir.

2 Q I would like to show you a series of photographs.

3 First, I'd like to show Government's Exhibit 36.

4 Do you recognize that photograph?

5 A I do.

6 Q What is that a photograph of?

7 A It's a photograph of the AVIS rental company.

8 Q Okay. Does it fairly and accurately show the location of
9 the AVIS in Northgate Mall?

10 A Yes, sir.

11 **MR. PRINCIPE:** Your Honor, the Government would move
12 to introduce Government's Exhibit 36.

13 **THE COURT:** Admitted.

14 **MR. PRINCIPE:** Permission to publish it?

15 **THE COURT:** Yes.

16 **BY MR. PRINCIPE**

17 Q So how would you describe the size and location of that
18 store?

19 A It's in a strip mall. It would be on the northeastern
20 side of it.

21 Q And what is Northgate Mall?

22 A Northgate Mall is a mall. This is actually off to the
23 west of it. It's a little strip mall.

24 Q So is Northgate Mall itself a traditional shopping mall?

25 A Yes, sir.

1 Q Okay. What is the current status of that mall?

2 A I think it is closed.

3 Q And can you describe the parking lot area around the AVIS
4 store?

5 A Yes. It's a wide open parking spot -- or public vehicle
6 area.

7 Q Okay. It is a very large parking area?

8 A Yes.

9 Q Now, I would like to show you Government's Exhibit 37.
10 Do you recognize what that's a photograph of?

11 A I do.

12 Q And what is it?

13 A It is the Lincoln SUV in question. And then the silver
14 car in the background, that was my city-issued vehicle at the
15 time.

16 Q Does this photograph fairly and accurately depict the
17 condition of that Lincoln MKX on April 18, 2018?

18 A Yes.

19 **MR. PRINCIPE:** Your Honor, permission -- Government
20 moves Government's Exhibit 37 into evidence.

21 **THE COURT:** Admitted.

22 **MR. PRINCIPE:** Permission to publish?

23 **THE COURT:** Yes.

24 **BY MR. PRINCIPE**

25 Q Did you notice anything about the condition of the vehicle

1 while you were there?

2 A I did. The rear driver's door is a different color than
3 the rest of the vehicle.

4 Q And what did you notice about the left passenger window?

5 A Yes. And it was halfway down.

6 Q I'm now showing you Government's Exhibits 38 and 39.

7 Do you recognize both of those photographs?

8 A I do.

9 Q And what was photograph 38?

10 A It was the parking space the Lincoln was parked in.

11 Q Okay. And Government's Exhibit 39, what does that show?

12 A That's the back of the Lincoln.

13 Q Did the back of the Lincoln show the make, model, and
14 license plate of that vehicle?

15 A Yes, sir.

16 Q Did it fairly and accurately do so?

17 A Yes.

18 **MR. PRINCIPE:** The Government would move to introduce
19 Government's Exhibits 38 and 39.

20 **THE COURT:** Admitted.

21 **MR. PRINCIPE:** And permission to publish those?

22 **THE COURT:** You may.

23 **BY MR. PRINCIPE**

24 Q So that's the Budget parking spot sign where the vehicle
25 was parked?

1 A Yes, sir.

2 Q And now Government's Exhibit 39, that's showing the rear
3 of the Lincoln MKX --

4 A Yes, sir.

5 Q -- and the license plate number?

6 Can you read the license plate?

7 A Z983205, Illinois state plate.

8 Q Now I'm showing you Government's Exhibits 40, 41.

9 What does Government's Exhibit 40 show?

10 A It shows the other side of the Lincoln SUV and also my
11 city-issued vehicle.

12 Q Okay. Were the windows on this other side of the vehicle
13 both rolled up?

14 A Yes, they were.

15 Q Did you notice anything unusual about the color of the
16 doors on that side?

17 A No, sir.

18 Q Does it fairly and accurately show that side of the
19 vehicle?

20 A Yes, sir.

21 Q I'm now showing you Government's Exhibit 41.

22 What is that a photograph of?

23 A It's a photograph from the front of the vehicle. Again,
24 you can see the different color and the rear door and the
25 window down.

1 Q Okay. Does it also fairly and accurately show the front
2 of that vehicle and the design of the body of the car?

3 A Yes, sir.

4 **MR. PRINCIPE:** The Government would move to introduce
5 Government's Exhibits 40 and 41 into evidence.

6 **THE COURT:** Admitted.

7 **MR. PRINCIPE:** And permission to publish those?

8 **THE COURT:** You may.

9 **BY MR. PRINCIPE**

10 Q So this is Government's Exhibit 40 on your screen; is that
11 right?

12 A Yes, sir.

13 Q And that shows the passenger side of the Lincoln MKX?

14 A Yes, sir.

15 Q And now Government's Exhibit 41, that shows the front and
16 also the driver's side with the rear window rolled halfway
17 down?

18 A Yes, sir.

19 Q I'm now showing you Government's Exhibits 42 and 43 and
20 44.

21 First, Government's Exhibit 42, what does that show?

22 A That is the driver's side of the Lincoln SUV.

23 Q Okay. Does it fairly and accurately show that side of the
24 vehicle, including the tires?

25 A Yes, sir.

1 Q Now, Government's Exhibit 43, what does that photograph
2 show.

3 A That shows the rear driver's door.

4 Q Okay. And can you see the window more closely in this
5 photograph?

6 A Yes, sir.

7 Q And what do you see there?

8 A It's rolled down.

9 Q Does it fairly and accurately show the condition of that
10 door and window at the time?

11 A Yes.

12 Q And now Government's Exhibit 44, what is that a photograph
13 of?

14 A It's the passenger side of the Lincoln.

15 Q Okay. Does it fairly and accurately show that side of the
16 vehicle?

17 A Yes.

18 Q And does it fairly and accurately show the headlight and
19 the taillight shape of that vehicle?

20 A Yes, sir.

21 Q Can you also see -- does that -- do the windows have any
22 tinting to them, if you can tell?

23 A The front ones do not. The back ones do.

24 Q And does that also fairly and accurately show that side of
25 the vehicle?

1 A Yes, sir.

2 MR. PRINCIPE: The Government would move Government's
3 Exhibits 42, 43, and 44 into evidence.

4 THE COURT: Admitted.

5 MR. PRINCIPE: And permission to publish those?

6 THE COURT: You may.

7 BY MR. PRINCIPE

8 Q That's Government's Exhibit 42; correct?

9 A Yes, sir.

10 Q And 43.

11 And then the passenger side, Government's Exhibit 44.

12 MR. PRINCIPE: I have no additional questions, Your
13 Honor.

14 THE COURT: All right. Any examination?

15 MR. FOSTER: No questions.

16 THE COURT: You may step down, sir. If you would,
17 put your mask back on.

18 MR. PRINCIPE: May he be released, Your Honor?

19 MR. FOSTER: No objection.

20 THE COURT: You are free to leave, sir.

21 (At 4:40 p.m., witness excused.)

22 MR. GREEN: May we approach, Your Honor?

23 THE COURT: Yes.

24 (The following proceedings were had at the bench by the
25 Court and Counsel out of the hearing of the jury:)

1 **THE COURT:** Mr. Green?

2 **MR. GREEN:** Our next witness is en route from
3 Florida, will be here -- planned to be here tomorrow morning.
4 We've gotten a little bit short of the 5:00 goal, but we're on
5 schedule -- the proposed schedule.

6 **THE COURT:** Do you have any other witnesses you can
7 call?

8 **MR. GREEN:** No, Your Honor.

9 **THE COURT:** That's the only one you can call at this
10 time?

11 **MR. GREEN:** Yes, Your Honor.

12 **THE COURT:** Okay. How are we looking for the rest of
13 the week?

14 **MR. GREEN:** We're on track.

15 **THE COURT:** Okay. All right. We'll -- I guess we'll
16 have to stop short there. If you can -- I know you have
17 logistic issues, trying to keep witnesses coming, but if there
18 is any way we can have backups, that would be helpful going
19 forward.

20 **MR. GREEN:** Understood.

21 **THE COURT:** Okay.

22 (End of bench conference.)

23 **THE COURT:** All right. Ladies and gentlemen, we're
24 going to stop here. You get to leave just a little bit early
25 today. I'm going to do my best not to keep you late, and on

1 occasion, maybe we can finish up early with the witnesses. We
2 have another witness who is en route but will not make it in
3 time for us to wait, so we're going to stop right here.

4 If you're taking notes, please put your notes in your
5 envelopes. Leave your envelopes in your chair. Please make
6 sure it has your juror number or your name on the outside.
7 That's going to be critically important so that we can
8 determine -- or Ms. Engle can determine whose is which. She is
9 going to lock them up for the night, and then we'll put them
10 back in your chairs or give them to you in the morning so you
11 have them.

12 Remember all of my admonitions to you. You've not
13 heard all the evidence. You're not to discuss the case. Don't
14 do any research. Don't try to learn anything about it or
15 determine if there is anything written anywhere about it, or
16 what have you, or on the Internet. It's critically important
17 that the only evidence that you hear is the evidence that comes
18 here in the courtroom. That's what you would want if you were
19 involved, and that's what the rules require. That way I can
20 rule on the evidence and know what's coming in and what's not.

21 So head home safely. Put the case out of your mind,
22 don't talk to anybody about it, and just come back tomorrow at
23 8:45 ready to resume across the hall in Courtroom No. 3. And
24 then we'll bring you in just as soon as we can, and if we can
25 start early, we will.

1 All right. So leave your notes there. Remember all
2 my admonitions, and I look forward to seeing you in the
3 morning.

4 If everybody else would remain in the courtroom while
5 the jury leaves.

6 (The jury departed the courtroom at 4:43 p.m.)

7 **THE COURT:** Please be seated. Let's wait until those
8 folks are out of the lobby so that I know it's safe for other
9 folks to head out there.

10 So the jury has left the courtroom.

11 Any issues you want to bring to my attention?

12 **MR. GREEN:** Well, Your Honor, we do have this time.
13 The Court had indicated it had some thoughts both about the
14 text message exchange as well as the evidence of flight. I
15 didn't know if the Court wanted to use this time for that
16 purpose.

17 **THE COURT:** Well, I would be glad to hear from the
18 parties as to what they -- what you intend to use. I guess the
19 question is what does Government intend to offer if any -- of
20 any of that? Then I can hear the Defendant's response to that.

21 I can say, based on the briefing, that it's not
22 entirely clear to me that Ms. Poole's comments, accusing the
23 Defendant of being involved in the crime, put into context
24 statements that the Defendant made. So there are statements of
25 the Defendant that would come in under the hearsay rules

1 because they are statements by the Defendant. I don't see that
2 they have to be technically inculpatory statements. As long as
3 they are relevant, they come in; they are statements by the
4 Defendant.

5 But there are a number of statements where Ms. Poole
6 accuses the Defendant of certain things, and he denies it. And
7 I'm having a hard time understanding how that puts anything
8 into context as to his statements. If he admitted it, that
9 would be another thing; but from what I saw, there were several
10 where he denied it. That's the part that they've objected to,
11 and that's the part that I think is -- I'm not clear on as to
12 why that would come in.

13 **MR. GREEN:** As I understand it, Your Honor, the
14 defense has informed me they object to all statements made by
15 the Defendant, not just --

16 **THE COURT:** I understand, and I'll hear from them;
17 but my reading of the law is that they don't have to
18 necessarily be inculpatory. They are statements of the
19 Defendant. As long as they are relevant, then they come in.
20 They are statements of the Defendant that constitute admissions
21 by him because they are statements by him.

22 **MR. GREEN:** I think that's right.

23 Your Honor, I would say obviously, you know, whether
24 it's inartfully worded in our response, one, his denial is not
25 controlling. It's, in and of itself, an admission in the sense

1 that it's a statement.

2 Second, if we look at -- the Government's proposition
3 is that between Miss Poole -- shortly after these events,
4 Miss Poole and the Defendant had a conversation in which he
5 made certain admissions, and those admissions are referenced
6 when she says: You told me this information.

7 And so if we read -- I think the focus, both by the
8 defense and possibly by the Court, is on the 25th -- on the
9 25th, when she says, "You're a murderer," and he says, "I'm
10 not," in actuality it seems that a clear reading of the entire
11 chain, which we tried to put toward in front of the Court,
12 would suggest that there is an earlier conversation that's
13 occurred between them, and there are obvious admissions by him,
14 talking about that earlier conversation. Separately --

15 **THE COURT:** The earlier conversation is not part of
16 the texts, though; correct?

17 **MR. GREEN:** It is not. I guess the question is is it
18 a fair reading when Miss Poole says, You told me this
19 information, that there had been an earlier conversation, and
20 then his subsequent -- the entire chain makes more sense, and
21 that is the essence of the Government -- separately, contained
22 within the text messages, he makes reference to paying all this
23 money to fix the rental car and other separate admissions that
24 are both admissions and separately inculpatory.

25 And so we did have a conversation with counsel, and

1 their position is none of it comes in.

2 Also, I would say, of course, Miss Poole now has
3 counsel. I called her counsel. I don't know what she --

4 **THE COURT:** Who is her counsel?

5 **MR. GREEN:** Corey Buggs.

6 **THE COURT:** Okay. I saw Mr. Buggs in the
7 courtroom -- I wondered -- earlier. I wondered if that's who
8 her counsel was.

9 **MR. GREEN:** Earlier there was -- in the discovery and
10 provided to the defense, there's jail conversations between
11 them where she references, I think a fair reading, the impact
12 of the socials, meaning the text messages, when the police
13 confronted her with those.

14 So I certainly understand where the Court is coming
15 from. That's not a legal thing, but I'm picking up what you're
16 putting down, Judge.

17 **THE COURT:** It's not a legal thing, but it's a thing.

18 **MR. GREEN:** But the point being, the Government's
19 argument is that, in the larger context, if you read the entire
20 chain starting from the top -- if you assume that there has
21 been an earlier conversation between them -- and I think that's
22 referenced in the text messages as well -- that you then
23 understand in the larger context his admissions. Why is he
24 talking about "I'm going to go jail for the rest of my life"
25 and other references?

1 I think there's clear references that he has stored
2 something in her house --"Get it out. It's my life" -- and
3 those types of admissions, which I think are relevant, and I
4 would just simply say that his denial does not control the
5 inquiry.

6 Thank you.

7 **THE COURT:** All right.

8 Do you not agree that under the case law any
9 statement the Defendant makes, so long as it's relevant and
10 it's not prejudicial under 403, would be admissible in the
11 case?

12 **MR. BRYSON:** I don't disagree with that, but the
13 point would be this: You know, if we're talking about text
14 messages were exchanged where she says, "You're a murderer,"
15 and he says, "No, I'm not," and if I understand the Court
16 saying, well, hers doesn't come in because it's a denial and it
17 doesn't explain any context, well, if we're just going to
18 introduce a text message where he says, "I didn't do it," how
19 is that relevant?

20 I don't think -- I think it loses its relevancy
21 outside of any context, and the context is just that he's
22 denying what he's being accused of. So I don't disagree with
23 the general principle that any statement that he makes, you
24 know, can be admitted. But I think, given this circumstance,
25 her accusations are not admissible because they don't provide a

1 context; and once you eliminate her accusations, then you just
2 simply have his denials, and I think they just don't become
3 relevant.

4 And if I can just address two parts of what the
5 Government was arguing and put in their pleading about the
6 prior conversation, and one is, in terms of -- there's
7 reference to "You turning me in" and what's the conflict
8 between the two and "This is my life you're talking about," one
9 of the things that needs to be put in context is this. When --
10 and we haven't talked about the chase yet, but one of the
11 things that the Government acknowledges is that during the
12 chase situation he was wanted on warrants, and one of the
13 warrants was felony assault by strangulation in which the
14 victim is Demetrice Poole.

15 And so there's a whole other context between the
16 relationship between these two people where she, in fact, was a
17 witness against him for an alleged assault that occurred on
18 March 28, 2018. This is an outstanding warrant for him at the
19 time.

20 The other thing is --

21 **THE COURT:** When was the warrant issued?

22 **MR. BRYSON:** March 28, 2018.

23 **THE COURT:** All right.

24 **MR. BRYSON:** The other thing is, in terms of the
25 reference to "Get the stuff out of the house," the Government's

1 also aware that one of the cooperating witnesses alleges and
2 says that Mr. Wiley was, in fact, a drug dealer.

3 So I think there's a lot of ways that you can read
4 these things, and I just think it just becomes really
5 speculative. And, you know, it -- really to introduce this
6 evidence is extraordinarily prejudicial to us because it almost
7 puts us in a position where we have to say, ladies and
8 gentlemen of the jury -- I mean, we almost have to reveal this
9 felony assault warrant in order to explain our situation. And
10 so it puts us in this situation where we say, ladies and
11 gentlemen of the jury, our client is not guilty of this murder
12 because he was really worried about this felony assault charge
13 against him. And so we find it extraordinarily prejudicial to
14 us to go into this matter.

15 **THE COURT:** Is there any chance this would be offered
16 tomorrow?

17 **MR. GREEN:** No.

18 **THE COURT:** Okay. All right. Well, I can give you
19 some reactions without a ruling, because we'd have to go
20 through this line by line --

21 **MR. GREEN:** Yes, Your Honor.

22 **THE COURT:** -- I think. So I can give you my
23 reactions, and then maybe you can consider what you might be
24 interested in doing, and you can make whatever argument you
25 want to make. I will just give you my reaction without it

1 being a formal ruling because I don't fully follow the context
2 of all this.

3 I understand the Government's argument. It does seem
4 to presuppose some kind of prior conversation. It would not be
5 unreasonable to assume that because they are in a relationship
6 of some kind, whatever it is.

7 But there are portions of it that are not entirely
8 clear to me what they would relate to; and when you get to the
9 flight issue, you've got the other question because this
10 warrant then kind of takes front and center of that as well as
11 the potential reason for the flight. He was fleeing with their
12 child, I think, if I remember the evidence right.

13 **MR. GREEN:** He was.

14 **THE COURT:** Yeah. So -- and I do think -- on the
15 flight issue, I think the case law requires that there be
16 sufficient indication that it was flight from the offense of
17 conviction or sought -- the conviction and not some other
18 offense.

19 **MR. GREEN:** That would be for a jury instruction on
20 flight. I think evidence of flight can come in to show
21 consciousness of guilt whether or not there is a jury
22 instruction.

23 **THE COURT:** Okay. But I think to be -- my question
24 is, to be admissible, does it have to -- does there have to be
25 sufficient foundation to show it would be related consciousness

1 of guilt for this offense and not transferred guilt from some
2 other offense? That would be my question. You need to take a
3 look at that.

4 I have some concern about that because there seemed
5 to be maybe dual motives, according to the Defendant. And your
6 brief originally, when you referenced -- in one of your briefs,
7 where you referenced the flight, you referenced the federal
8 agents were seeking to arrest him for the felony assault
9 warrant.

10 **MR. GREEN:** They were.

11 **THE COURT:** So that would suggest to me that, well,
12 maybe there is evidence of guilt, but not for this crime, and
13 it would be prejudicial for the jury to infer that it was for
14 this crime and not that. That's my concern.

15 **MR. GREEN:** I understand.

16 **THE COURT:** So address that.

17 When I go through these -- and they do have to kind
18 of go through each one -- one of the difficulties is there are
19 a lot of generalized references here. It's hard to know
20 exactly what they are talking about. But page 7, No. 5,
21 Mr. Wiley makes an admission. That might be admissible because
22 it's his admission. I don't know that her comments after that
23 are necessarily necessary for putting that into context, but
24 there is an admission there on No. 5.

25 And the objection, I think, is largely, if I

1 understand it, to her comments which are alleged to
2 contextualize his statements, and it's not entirely clear that
3 it contextualizes it sufficiently. I'm also concerned that
4 from the 401/403 balance it may not survive that, given the
5 facts.

6 No. 7, page 9, his first comments there, her
7 response, his then response, "I don't want these," and he uses
8 the N word, "in my mouth." And then she says, "I'ma let it go
9 then. Get this," uses the S word, "together fast." Beyond
10 that, I don't understand how the rest of her comments puts
11 anything else into context, and I think that may be gratuitous.

12 No. 8 appears to be an admission, if I understand it.

13 **MR. GREEN:** That's page 7, Your Honor?

14 **THE COURT:** Page 10. You have them numbered. This
15 is Item 8.

16 **MR. GREEN:** Yes, Your Honor.

17 **THE COURT:** Who is Raheem?

18 **MR. GREEN:** Raheem is someone on the peripheral of
19 this case known by Mr. Wiley and Miss House.

20 **THE COURT:** Is he -- Mr. Wiley says he's in jail. Is
21 he in jail related to this?

22 **MR. GREEN:** No. He would ultimately be arrested
23 around the time --

24 **THE COURT:** And who is Shea?

25 **MR. GREEN:** That's Miss Stackhouse, who is also

1 referenced in this case in terms of someone who was involved in
2 Miss House getting rental cars for Shea and Mr. Wiley.

3 **THE COURT:** There is a reference then where he says,
4 "Shea at headquarters." What do you contend that means?

5 **MR. GREEN:** Arrested. "Headquarters" meaning police.

6 **THE COURT:** Related to this?

7 **MR. GREEN:** Not to this case specifically, not to the
8 homicide, but Shea was at headquarters, had been arrested with
9 Raheem.

10 **THE COURT:** But arrested in relationship to any
11 matter related to the case?

12 **MR. GREEN:** No.

13 **THE COURT:** All right. Well, the difficulty I have
14 with 8 is I don't know exactly what he's confessing to, so to
15 speak. So I don't see any context for that. I assumed that
16 Shea and Raheem might have something to do with this case; and
17 if they don't, then that makes that more problematic.

18 No. 9 on page 11, he says, "You did hide it tho..."
19 What's that a reference to, in your view?

20 **MR. GREEN:** A firearm.

21 **THE COURT:** Okay. Are you going to have separate
22 evidence to support that inference?

23 **MR. GREEN:** Within the text messages, she says she is
24 going to get bullets for it.

25 **THE COURT:** Okay. I take it -- it doesn't appear

1 she's going to be testifying.

2 **MR. GREEN:** I don't know the answer, but I doubt it.

3 **THE COURT:** All right. If there is evidence that you
4 can tie up that she was hiding a firearm for him that related
5 to this event, then those text messages would be admissible, I
6 would think. In this instance, not all of those on that page,
7 though, seems to me, would fit that, and the last two lines,
8 one by Mr. Wiley and one by Miss Poole, I would have some
9 concern about those.

10 He makes -- on No. 10, page 13, he makes an
11 admission. He also seems to be, in a way, threatening
12 Miss Poole about be-careful-what-you-say kind of thing because
13 you're going to say something that might get us in trouble.
14 That's the essence of that. I don't think her response is
15 necessary for that admission. It doesn't contextualize it, in
16 my view. So No. 10 possibly is admissible.

17 I'm not sure why No. 11 -- why the Government desires
18 that.

19 No. 12 is an admission by him in the first statement.
20 He basically admits to having to spend all his savings to get
21 the rental car fixed, as I understand it.

22 **MR. GREEN:** Yes, Your Honor.

23 **THE COURT:** I don't know whether all the statements
24 are necessary to contextualize any of that. On the other hand,
25 I don't know that they are inadmissible. I mean, perhaps they

1 contextualize it because they at least provide some context.

2 No. 13, his first statement appears to be an
3 admission and a threat to Miss Poole, but then he goes on, and
4 she makes accusations against him. He denies it. I think
5 that's problematic to be admitted. However, in her last few
6 statements, she talks about the oil change after the car was
7 fixed within two days after it got shot up.

8 Is that the Lincoln?

9 **MR. GREEN:** Hurt in the chase -- I believe her car
10 was damaged, and that may be a reference to her car.

11 **THE COURT:** Okay. So how would that be relevant to
12 any of this?

13 **MR. GREEN:** The oil change?

14 **THE COURT:** Yes.

15 **MR. GREEN:** I believe she makes a reference -- there
16 appears to be a running argument between you can't fix my car,
17 which you got damaged during the chase, and yet you can ride
18 around in these rentals.

19 **THE COURT:** Okay. All right. Well, she does say
20 that, and he says, in response, "You really...get me jammed up
21 about a...oil change."

22 **MR. GREEN:** Correct.

23 **THE COURT:** So he doesn't deny it when he's actually
24 been -- when the statement has been made, which could be
25 potentially deemed by a jury to be accepting the statements.

1 So the last few comments, starting with "You supposed
2 to got my oil changed" all the way down to the rest of No. 13
3 there on page 16 might be admissible.

4 I have trouble with No. 14 because he basically
5 denies everything throughout.

6 No. 15 is an admission by him and a threat, as I read
7 it, which might be potentially admissible. However, I don't
8 understand how Poole's four statements on top of page 19 are
9 necessary for any context.

10 No. 16, he makes an admission. I don't understand
11 how her comments are necessary for context because he basically
12 denies it. He says, you're believing too much on what you see
13 on TV and "cut it out." The Defendant raises a 403 challenge
14 to that, and I think that's a legitimate concern.

15 Same -- similar problems with No. 17 starting on page
16 19.

17 When I get to page 21, that one is a little closer
18 because buried in the middle is her statement, "And you right I
19 did you murdered that man and you going to jail periodtttt."
20 And his response is "Whatever." But then he goes on and says,
21 but "I haven't done anything," which is a denial. So I don't
22 know about what's on that page. I will think about that, but I
23 would need some more context for that.

24 No. 18 is your final group. That's a threat to
25 Miss Poole that if you're going to go down to talk to them,

1 make sure you tell them what you know. And "if you know
2 details," he says, they are going to want to know how you know
3 it, and that means you must have been involved, a little bit of
4 threat. So 18 might be admitted, that group.

5 So that's my general reaction to that. You can
6 consider that. You can talk with the Defendant. I don't
7 know -- the Defendant doesn't seem to object to the notion that
8 Mr. Wiley's statements can come in as long as they are not
9 misleading, I suppose, and so any statement he makes might come
10 in. It's more so Miss Poole's statements and how -- if that's
11 necessary for context, and if it's not necessary for context,
12 then it shouldn't come in.

13 The other question I would suggest is I can't tell
14 you how to try your case. I won't, but you have to decide what
15 kind of evidence you need to put in. And if something is a
16 closer argument, you got to decide whether you want to make the
17 argument or not. That's up to the Government. I'm not
18 suggesting one way or the other. I'm just saying, as you look
19 through these, you make that decision, however you want to
20 proceed. I'll make the legal ruling.

21 **MR. GREEN:** Understood.

22 **THE COURT:** All right. So does anybody want to react
23 further, or do you want to digest that, and we'll talk some
24 more tomorrow?

25 **MR. GREEN:** I am prepared just to digest it. Thank

1 you, Your Honor.

2 **THE COURT:** If you would do that.

3 That's my general reaction. I don't know what you
4 all know in terms of the evidence. Based on what little I
5 know, that would be my initial reaction. I would need to hear
6 more on why it should be admitted for some of those, and you
7 can decide how you want to proceed. And I'm happy to hear the
8 argument, and I will make a ruling, however you want to
9 proceed.

10 **MR. GREEN:** Yes, Your Honor.

11 **THE COURT:** Now, on the car chase issue, I do think
12 you need to check the law and see if you're going to -- how
13 you're going to be able to tie that up to this offense,
14 consciousness of guilt for this offense, in light of whatever
15 the facts are that you know them to be.

16 **MR. GREEN:** I will.

17 **THE COURT:** And then I would be glad to hear that.
18 We've done some initial looking, and that's my concern.

19 **MR. GREEN:** Yes, Your Honor. I will say on that
20 issue -- and I am aware of the case law on that question. I do
21 believe in some of the case law I found and we can -- I won't
22 argue it now. I will just forecast it so both the attorneys
23 can be thinking about it as well. I believe there is a
24 difference between evidence that's consciousness of guilt and
25 an instruction on flight.

1 Further, I believe that, in the context of this
2 story, it's -- I believe the objection was 404(b) evidence. We
3 don't believe it's 404(b). It's inextricably intertwined with
4 the events of the entire --

5 **THE COURT:** Well, it might be if it's related to this
6 offense, but if it turns out that he had just -- well, if it
7 turns out that the only reason they were chasing him was
8 because of some outstanding warrant on a felony assault and he
9 knew that, then it would be another -- I think another wrong
10 under 404(b), would it not?

11 **MR. GREEN:** No. And he did know. And it,
12 subjectively for them, the police -- I will say they wanted to
13 serve the warrant because they wanted to catch him with his
14 cell phone. So when the blue lights are flashing, you know,
15 the subjective mind of the pursuing police officer really isn't
16 significant.

17 I will say the evidence will be, and I think it was
18 forecast in Mr. Principe's argument, that before this chase,
19 there was a call recorded where the Durham Police Department
20 had a conversation with Mr. Wiley and said, You need to come on
21 down and talk to us and get this rental vehicle back down to
22 us. And there is also a text message in the extraction, I
23 believe from Miss House to Mr. Wiley or vice versa, that says
24 "They know."

25 So I guess -- I certainly understand the Court's

1 consideration and whether it would be 403 a concern, but I'm
2 also trying to be conscious of -- I will put this -- I hope I'm
3 not overstepping, but kind of who gets to make that call. I
4 certainly understand if the judge -- if you say not
5 intrinsically intertwined, it's 403(b), that puts us in a
6 different place.

7 **THE COURT:** What is the date of the chase?

8 **MR. GREEN:** April 19.

9 **THE COURT:** So that's four days afterwards?

10 **MR. GREEN:** Yes, Your Honor. And that would be the
11 day after Detective Cramer spoke to him and Mr. Wiley admitted
12 he had the rental car.

13 **THE COURT:** I'm not saying that there cannot be more
14 than one reason why somebody is being chased; and if there is
15 more than one reason, then it doesn't come in. I'm not saying
16 that. What I'm saying is I think there has been to be
17 something to connect it up, because to be intrinsic to this, it
18 would have to be part of the same series of events. And as you
19 get past a little period of time, it may be -- there needs to
20 be some evidence to tie it together is all I'm saying.

21 **MR. GREEN:** I understand.

22 **THE COURT:** So if you have that, I'm glad to consider
23 it, and then it might be enough. I don't know.

24 **MR. GREEN:** Understand. Thank you, Your Honor.

25 **THE COURT:** That's my concern.

1 Do you want to be heard, Mr. Foster?

2 **MR. FOSTER:** Yes, Your Honor. I mean, on this idea
3 that this evidence is intrinsic to the offense --

4 **THE COURT:** Which evidence?

5 **MR. FOSTER:** The car chase evidence.

6 **THE COURT:** Okay.

7 **MR. FOSTER:** As you just pointed out, this happened
8 four days later. It's at a different place, removed from the
9 crime scene. Our client was alone; he was not with any of the
10 co-defendants. He was in a different vehicle. There were
11 active domestic violence warrants for him, and I think there's
12 indications in the texts and everything else that they were
13 having problems, and that could easily be the reason why he was
14 fleeing.

15 **THE COURT:** "That they," he and his girlfriend?

16 **MR. FOSTER:** Yeah. I mean, they were constantly
17 arguing about everything. You know, she's mad at him. If
18 that's the reason he's fleeing, then it's completely
19 irrelevant. I mean, consciousness of guilt is only relevant if
20 it's consciousness of guilt for the offense on trial.

21 **THE COURT:** Well, I understand. And, like I said, I
22 think it's possible that maybe he was thinking of both; in
23 which case, maybe he would not have a high-speed chase for a
24 felony assault; he would just turn himself in. But this is a
25 little more serious.

1 And so I think it is going to depend on the facts.
2 It will depend on what foundation is laid.

3 I'm just suggesting you take a look at the case law
4 on what the threshold is for admissibility on that, and then if
5 you make a 403 argument -- if it were to pass the threshold, I
6 will hear your argument on 403 as well, and then we'll make a
7 decision.

8 I take it that's not coming up tomorrow either?

9 **MR. GREEN:** It is not.

10 **THE COURT:** Okay. All right. So take a look at
11 those. Those are my initial reactions to both of them. I will
12 be glad to make a final, formal ruling at some point. My
13 experience is sometimes if I give you some sense of kind where
14 I'm leaning, that might help parties decide what they want to
15 actually seek to put in and then what the response is.

16 Anything further?

17 **MR. GREEN:** No, thank you, Your Honor.

18 **MR. FOSTER:** No, Your Honor.

19 **THE COURT:** So 8:45 in the morning. We'll keep
20 moving along with the witnesses. And if we get done early, if
21 you could have more lined up that would be great. I understand
22 you have quite a few.

23 **MR. GREEN:** Your Honor, just for planning and kind of
24 where our heads are at in this case, if you look at the
25 proposed witness list, which the defense has, we continue to

1 call them in order. Some of those witnesses will be shortish,
2 14 through 17 and 20. Mr. Benjamin Shields, who you see there
3 at 23, is going to be extensive, collection of forensic
4 evidence. I just -- I don't know how to make that go fast or
5 slow. We're talking about 100 pictures. If you look under our
6 physical evidence over there, probably numbers in the 100. So
7 that's -- we're just trying to guess.

8 If you look again -- and we ask the Court's
9 indulgence. We do give some thought about the order and
10 presentation of witnesses. Thursday we have a series of expert
11 witnesses, some coming from Raleigh. We try and do a little
12 bit better with them in terms of a date certain. I will be
13 prepared to call a witness out of order, Mr. Cramer; but,
14 again, if we close in on that 4:30 to 5:00 window, if we can
15 avoid calling a witness outside of order, we're going to seek
16 the Court's indulgence only because it kind of plays havoc with
17 stuff that's already in evidence or not in evidence that we
18 would anticipate a witness relying on.

19 **THE COURT:** To the extent you have a number of photos
20 and you have a witness who's going to introduce them, you can
21 talk with your opposing counsel and decide whether since -- if
22 they are not objected to, whether there can be an
23 identification as to the group, identify the group. And then
24 when you publish them all, they can explain what they all are.
25 So you only have to have a witness once say what otherwise

1 would be the same thing, because they are explaining what they
2 are when they are identifying them and then they are repeating
3 it when they are published to the jury.

4 That's up to -- if the Defendant wants to agree to
5 that, that's fine. If they don't want to agree to that, then
6 we'll just go with the procedure that we have. That would be
7 one way perhaps you could, at least as to photos, move some
8 things along, if you have large collections of them. I leave
9 that to you all how you want to proceed.

10 **MR. GREEN:** Thank you.

11 **THE COURT:** We'll see you tomorrow at 8:45 then.

12 I think that's all I have, so you all have a good
13 night.

14 (Proceedings recessed overnight at 5:19 p.m.)

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16 END OF VOLUME II OF VII

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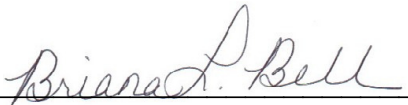
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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4
5

6 I, Briana L. Bell, Official United States Court
7 Reporter, certify that the foregoing transcript is a true and
8 correct transcript of the proceedings in the above-entitled
9 matter prepared to the best of my ability.

10
11 Dated this 4th day of February 2022.
12

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14 
15 Briana L. Bell, RPR
16 Official Court Reporter
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